4-477

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 225.

PHILADELPHIA BAR ASSOCIATION

BENJAMIN STARK, APPELLANT,

vs.

LEWIS M. STARR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED NOVEMBER 4, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 225.

BENJAMIN STARK, APPELLANT,

vs.

LEWIS M. STARR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

INDEX.

	Original.	Print.
PLEADINGS.		
Original bill	1	1
Exhibit A: Stark and Lownsdale, agreement of March 1, 1850	16	8
Exhibit B: Coffin and Chapman, ratification	21	10
Exhibit C: Couch, for Stark, ratification	21	10
Exhibit D: Abstract of conveyances	22	11
Amendment to original bill	25	11
Answer to amended bill	31	13
Replication	55	24
EVIDENCE.		
Stipulation: 18th October, 1871	1	24
2d November, 1871	2	25
1st August, 1872	10	26
13th August, 1872	113	102
EVIDENCE OFFERED BY COMPLAINANT.		
Exhibit A, deed, F. W. Pettygrove to D. H. Lownsdale	3	26
B, bond, Lownsdale to Pettygrove	5	27
C, Lownsdale to S. Coffin, deed of claim	6	28
D, Lownsdale and Coffin, agreement of copartnership	7	29
E, Lownsdale, Coffin and Chapman, agreement	8	29
F, Lownsdale, Coffin and Chapman to Chapman	9	30
4, Lownsdale, Coffin and Chapman, agreement of March 10, 1852, "The escrow"	14	33
5, W. H. Bennett, sheriff, to W. H. Barnhart, certificate	17	35
6, C. A. Eastman to Hutchins and Hale, deed	18	36
7, Hutchins to A. M. Starr and Ankeny	20	37
8, Ankeny and wife to L. M. Starr	21	38

	Original.	Print.
Exhibit 9, Hale to Hutchins	23	39
10, Chapman to Starr	24	40
11, Chapman to Butler	25	41
12, Marye to McCay	26	41
13, Butler to McCay	26	41
14, McCay to Starr	27	42
15, Hutchins and Hale to A. M. and L. M. Starr	28	42
18, Chapman to Powell	31	45
19, Powell to Starr and Starr	32	45
20, Powell to Cleaver	34	46
21, Peters and wife to Malissa Cleaver	35	47
22, Mrs. Cleaver and husband to Starr	36	48
23, Barnhart to Norris, power of attorney	38	50
24, Barnhart, per Norris, to Eastman	39	50
25, Chapman to Winter and Latimer	41	52
26, A. M. and L. M. Starr to Sherlock and Bacon	42	52
27, A. M. to L. M. Starr	43	53
28, A. M. to L. M. Starr	44	54
29, Winter and Latimer, by Bennett, sheriff, to Barnhart	46	55
30 and 31, Transcript of Judgment vs. Winter and Latimer	47	56
DEPOSITIONS.		
L. M. Starr	114	103
Stephen Coffin	133	116
George H. Flanders	146	124
Wm. S. Caldwell	150	127
A. M. Starr	154	129
W. W. Chapman	164	136
Wm. Strong and Exhibits A and B	186	150
A, power of attorney, Stark to Couch	187	151
B, letter of instruction	188	152
B. F. Smith	189	152
Wm. H. Bennett	192	155
Wm. Seton Ogden	197	158
A. B. Stewart	198	158
Shubrick Norris	199	160
Jackson Powell	202	161
James Burke	203	162
Isaac W. Buchanan	204	163
W. B. Pittenger and Exhibits A and B	205	164
A, Execution vs. Winter and Latimer	206	164
B, Alias execution	208	165
W. W. Chapman, (recalled)	209	166
Wm. Geiger, jr., with exhibit	211	167
Exhibit: Stark and Lownsdale, March 1, 1850	213	169
DEFENDANT'S TESTIMONY.		
Exhibit A: Judgment-roll in Starrs vs. Stark	55	61
Complaint	55	62
Demurrer	63	67
Order sustaining demurrer	63	67
Amended complaint and Exhibits A, B, and C	64	67
A: Patent to city of Portland	67	69
B: C., L., and C. to Chapman	69	71
C: Stark and Lownsdale, agreement March 1, 1850	69	71

	Original.	Print.
Exhibit A, amended: Stark's donation-certificate	73	74
Stark's patent	75	75
Answer to amended complaint	76	76
Motion to strike out	80	78
Order thereon	81	79
Demurrer to amended complaint	82	80
Motion to strike out reply and order	83	80
Order revoking former order sustaining demurrer, and allowing amendment of complaint, and requiring plaintiff to elect	84	81
Second amended complaint, with exhibits	86	82
Demurrer of defendant	93	87
Ruling on same	94	88
Answer	94	88
Motion to strike out	96	90
Ruling on same	97	90
Replication	98	91
Decree	106	97
Proceedings on appeal	107	97
DEPOSITIONS OF DEFENDANT.		
E. M. Burton	218	173
Ira Goodenough	221	175
Decree	224	176
Petition for appeal	227	177
Bond	229	178
Citation	231	178
Clerk's certificate	232	179
Opinion	233	179

1 In the circuit court of the United States for the district of Oregon.

L. M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, DEFENDANT. } In equity.

To the honorable the judges of the circuit court of the United States for the district of Oregon:

L. M. Starr, of the city of Portland, Oregon, brings this his bill against Benjamin Stark, of New London, Connecticut, and, complaining of said defendant, avers and alleges as follows:

That your orator is a citizen of the State of Oregon, and the defendant, Benjamin Stark, is a citizen of the State of Connecticut; and your orator alleges that he is by his tenants and by himself in possession of certain parcels of land situate in the city of Portland, within said district of Oregon, and known as lots numbered one, (1,) two, (2,) and the north one-half of lot numbered four, (n. ½ of 4,) in fractional block numbered eighty-one, (81,) in the city of Portland aforesaid.

2 That Benjamin Stark, the above-named defendant, on the twenty-second (22d) day of December, in the year eighteen hundred and sixty-eight, (1868,) commenced actions at law in this honorable court against William Young and others, tenants of your orator, to recover possession of said lands, which said actions, by agreement of parties and order of court, were consolidated, and such proceedings were had in said action in this honorable court, on the law side thereof, as that on the fifteenth (15th) day of February, in the year eighteen hundred and seventy, (1870,) said Benjamin Stark recovered a judgment against your orator for the possession of said premises and for the sum of
for use and occupation, besides for costs and disbursements, according to the prayer of the declaration filed by said Stark in said action.

That said Stark is threatening to issue execution and to have your orator, by virtue of said judgment and execution, put out of said premises and his property seized and sold to pay said sums of money so recovered as aforesaid; and your orator believes that unless said Stark be restrained he will proceed to put your orator out of said premises and to make said sums of money, to the great injury of your orator.

That your orator has, as he is advised and believes, a good equitable title and estate in and to the said parcels of land, as against said Benjamin Stark, his heirs and representatives, and your orator respectfully avers that he ought to be adjudged to have, hold, and possess said premises, and every parcel and part of the same, peaceably and quietly, forever, and to have said proceedings upon judgment and execution as aforesaid by said Benjamin Stark stayed and perpetually enjoined.

3 And, by leave of your honors, your orator for cause of suit now here shows to this honorable court: That heretofore, to wit, all the time from the thirteenth (13th) day of December, in the year eighteen hundred and forty-nine, (1849,) up to the thirteenth (13th) day of April, in the year eighteen hundred and fifty, (1850,) Daniel H. Lownsdale, Stephen Coffin, and W. W. Chapman, citizens of the United States, were tenants in common, and in actual, open, and notorious possession of a tract of land in the then Territory, now State, of Oregon, containing about six hundred and forty (640) acres, within which tract the city of Portland aforesaid and the lots and premises in controversy between your orator and the defendant are situated.

That said Lownsdale, Coffin, and Chapman were lawful occupants of

said tract of land under the provisions of law then in force in said Territory, and claimed title to the same.

That said Lownsdale, Coffin, and Chapman were at the time and prior aforesaid expecting to obtain title from the United States to said tract of land, and had plotted, laid off, surveyed, and sub'ounded the same into lots and blocks, and sold divers parcels, or lots, or blocks, to be occupied for purposes of trade and commerce, and undertaken and promised the occupants of said lots, under them as aforesaid, that they, said Lownsdale, Coffin, and Chapman, would use diligence and every reasonable effort to obtain title to the tract including said lots and blocks from the Government of the United States, and had agreed, in the event of obtaining such title, to confirm the titles of the purchasers and occupants of the lots and blocks sold as aforesaid.

4 That the said Benjamin Stark, at that time and prior thereto, having full knowledge of the possession, claims, and undertakings of said Lownsdale, Coffin, and Chapman, set up a claim of and to an undivided half of said tract of land, (called for convenience the Portland town-site,) adverse to the said occupants, alleging as the grounds of said claim some prior occupancy thereof, under the provisional government of Oregon Territory, with one F. W. Pettygrove; and the said Benjamin Stark, being then resident in San Francisco, California, undertook, on the first day of March, in the year eighteen hundred and fifty, (1850,) to determine, adjust, and settle with Daniel H. Lownsdale, one of said joint occupants, the title and possession of said tract of land. That on the said first day of March, 1850, at San Francisco, California, in pursuance of said settlement and adjustment with Daniel H. Lownsdale, and as evidence thereof, the said Benjamin Stark and said Daniel H. Lownsdale made and delivered interchangeably, under their hands and seals, a certain deed and indenture, whereby said Stark released and quit-claimed to said Lownsdale all that portion of said Portland town-site lying south of a line located about where Stark street in said city now is, and said Lownsdale released and quit-claimed to said Stark all of said tract of land lying north of said line of said Stark street as aforesaid, and said Stark, in and by said deed, undertook and covenanted to ratify and confirm the conveyance of lots and blocks within said tract, made by said Lownsdale or his attorneys, prior to the first (1st) day of January, in the year eighteen hundred and fifty, (1850,) and also all such conveyances of lots within said tract made by said Lownsdale, or his attorneys, prior and up to the first (1st) day of March, in the year eighteen hundred and fifty, (1850,) upon certain con-

5 ditions in said indenture specified; all which matters will more fully appear by reference to said indenture, a copy of which your orator filed with this his bill of complaint, marked "Exhibit A," and prays to have the same made a part of this bill.

That said Stephen Coffin and W. W. Chapman had no notice, nor did either of them have any notice, of said attempted settlement and adjustment, or of said indenture made between said Lownsdale and Stark, until on or about the thirteenth (13th) day of April, in the year eighteen hundred and fifty, (1850.)

That on or about the twentieth (20th) day of March, in the year eighteen hundred and fifty, (1850,) said Coffin and Chapman, (said Chapman being then and there the attorney in fact of said Lownsdale,) being then wholly ignorant and without any notice of the aforesaid transaction and indenture between said Stark and Lownsdale, undertook to make a partial partition of a portion of said Portland town-site, between said three proprietors and joint occupants, and made transfers

and conveyances, the one to the other, so that of three blocks of land within said site, of about equal size and value, one was taken by each proprietor and conveyed to him to hold, in severalty, to wit: Block seventy-eight (78) was conveyed to D. H. Lownsdale, block seventy-nine (79) to Stephen Coffin, and block eighty-one, (81,) which is the block in controversy, to W. W. Chapman. That it was provided in and by said indenture that in case any person holding or claiming said tract of land, to wit, the Portland town-site, or an interest therein, under said Daniel H. Lownsdale, should refuse to ratify and confirm said indenture as made between said Stark and Lownsdale, said Benjamin Stark should not be bound thereby, in case he chose, within six months thereafter, to rescind the same; and your orator avers that said Coffin had

6 come into possession of said tract of land held *and* under Daniel H. Lownsdale, by virtue of conveyance and writings made between said Lownsdale and Coffin on the thirtieth (30th) day of March, in the year eighteen hundred and forty-nine, (1849,) and said Chapman had come into possession and held, by virtue of agreements and conveyances made between him and said Lownsdale and Coffin on the thirteenth (13th) day of December, in the year eighteen hundred and forty-nine, (1849,) which facts and transactions, as well as the claims of said Chapman and Coffin to joint ownership with said Lownsdale, were fully known to said Stark at the time he executed said indenture; and your orator avers and charges that said Coffin and Chapman were the persons intended and had in view by said Stark and Lownsdale, whose refusal to ratify said agreement and indenture was provided for by the clauses of said indenture last above mentioned. That on said first day of March, and thence afterwards, till subsequent to the fifteenth (15th) day of April, in the year eighteen hundred and fifty, (1850,) John H. Couch, residing at Portland aforesaid, was the attorney in fact of said Benjamin Stark, and was specially directed and empowered, in writing, by said Stark to settle and adjust with said Coffin and those claiming with or under him the title and possession of said adverse claimants to said Portland town-site.

That on or about the thirteenth (13th) day of April, in the year eighteen hundred and fifty, (1850,) said Lownsdale and Couch gave said Coffin and Chapman notice of the said indenture, and applied to them, as the co-claimants and co-tenants with said Lownsdale of said tract of land, to ratify and confirm said indenture, and your orator is informed and believes that said Coffin and Chapman refused to ratify or

7 confirm said indenture, and refused to relinquish the possession of the said tract, north of Stark street, to said Stark, as provided in and by said indenture, unless and except upon the consideration that all property, lots, and blocks within said parcel north of Stark street which had been disposed of or conveyed to any persons by said Lownsdale, Coffin, and Chapman, or either of them, up to date of notice to them of such indenture, should be placed and acknowledged by said Stark to be upon the same footing of absolute ratification and confirmation of the transfers as has been done with property disposed of prior to the first (1st) day of January, in the year eighteen hundred and fifty, (1850,) and said Stark, by his agent and attorney in fact, then and there agreed to such exceptions and conditions.

Thereupon said Coffin and Chapman, on said thirteenth (13th) day of April, 1850, executed a written instrument, under their hands and seals, ratifying and confirming said indenture, upon the conditions above recited, which matters will more fully appear by inspection of said agreement, a copy of which is herewith filed, marked "Exhibit B," and made

a part herewith, if the court will so allow, and then and there said Stark, by John H. Couch, his attorney, executed in writing an acceptance and ratification of said conditions, stipulated for by said Coffin and Chapman, which writing was appended to said instrument, described as "Exhibit B," and is herewith filed, marked "Exhibit C," and your orator prays that the same be made a part of this bill.

And your orator alleges and charges the fact to be, that the said writings of April thirteenth, (13th,) 1850, were intended, by the parties and were understood by said Coffin, Chapman, and Lownsdale, and also by said Couch, as the agent of said Stark, so to have modified said indenture as to make the terms and provisions thereof apply to and include said block eighty-one, (81,) which had been disposed of, as above mentioned, on the twentieth (20th) day of March, 1850.

8

And your orator is informed and believes, that said Benjamin Stark, soon, to wit, a few weeks after said thirteenth (13th) day of April, 1850, came, himself, to Portland, and was furnished by said Chapman with a list of all property to which it was claimed by said Coffin and Chapman, the said indenture and the said modification thereof was intended to apply, and especially was notified that said block numbered eighty-one (81) had been so disposed of and was claimed to be conveyed by said writings, and said Benjamin Stark being then and there fully advised of the promises, acquiesced in and assented to what had been done, as aforesaid, by said Couch, his agent.

And in the claim of said Chapman respecting said block eighty-one, (81,) and thereupon, by reasons of the stipulations, agreements, and understandings of said Stark, the said Coffin and Chapman relinquished and abandoned to said Stark their proprietary claim to the tract included in said indenture, (copy of which is Exhibit A,) and specified as released to said Stark, except the portions and lots and blocks disposed of as aforesaid, and especially said block eighty-one, (81,) of which said Chapman was then in possession.

And your orator is informed and believes, and charges the fact to be, that it was and is the true intent and meaning of said writings, of which copies are marked "Exhibit A," "B," and "C," and herewith filed, and was understood by all the parties thereto, that the said Benjamin Stark was bound to ratify and confirm to the occupants of the lots and blocks conveyed and disposed of by said Lownsdale and his attorney, prior to said thirteenth (13th) day of April, in the year eighteen hundred and fifty, (1850,) and especially to the occupants of block eighty-one, (81,) the title to the same; and that said Stark, in entering upon the tract including said lots, and claiming the same as proprietor thereof, was to be held and to act as the trustee of said occupants respectively, and get and hold any title he might obtain in and to said tract for the use and benefit of said occupants, so far as their interest and claim extended.

9

That said Benjamin Stark, upon the abandonment of said Coffin and Chapman of their proprietary claim to said tract, north of said Stark street as aforesaid, with full knowledge of the claims of said Chapman to said block eighty-one, (81,) and of his assigns, as hereafter stated, entered into possession of said tract as general owner and claimant thereof, and did not, within six months or at any time, rescind said indenture, of which "Exhibit A," "B," and "C" are copies, but afterwards made claim to said tract of land, released and abandoned as aforesaid, under the provisions of the act of Congress entitled "An act to create the office of surveyor-general of the public lands in Oregon,

and to provide for the survey, and to make donations to settlers of said public lands, approved September 27th, 1850," and such proceedings were thereupon had as that said Stark received, on the day of , from the proper officers of the land-office at Oregon City, a certificate numbered , for said tract of land, abandoned to him as aforesaid by said Lownsdale, Coffin, and Chapman as aforesaid, and on the day of December, 1860, a patent was issued to him, under said act, whereby he became and is the holder of the legal title of said tract of land.

10 That on the third (3d) day of October, in the year eighteen hundred and fifty, (1850,) said W. W. Chapman, being in possession of said block eighty-one, (81,) and claiming title thereto as aforesaid, sold, for a valuable consideration, to wit, one thousand dollars, ($1,000,) to L. M. Starr, your orator, the south half of lot two (2) in said block eighty-one, (81,) and on the eleventh (11th) day of November, 1850, said Chapman, for a valuable consideration, sold and conveyed to Jackson Powell said lot four, (4,) in said block eighty-one, (81,) and on the thirtieth (30th) day of January, in the year eighteen hundred and fifty-one, (1851,) the said Chapman sold and conveyed, for a valuable consideration, lot one (1) in said block to Winter & Latimore, and on the day of October, in the year eighteen hundred and fifty, (1850,) said Chapman sold, for a valuable consideration, the north half of lot two, (2,) in said block, to J. B. V. Butler.

That the said lots one (1) and two, (2,) and the north half of lot four, (4,) in said block eighty-one, (81,) were afterwards sold and conveyed to and by different persons, and finally to your orator, as more fully shown and specified in abstract of title herewith filed and made a part hereof, and marked "Exhibit D."

That the said Winter & Latimer went into actual and open possession of said lot one, (1,) and in the winter and spring of the year eighteen hundred and fifty-one (1851) made valuable improvements thereon by building a store-house thereon and making streets adjacent thereto, and occupied the same as a place of business until some time in the year eighteen hundred and fifty-two, (1852,) when, about the twenty-fourth (24th) day of July, 1852, said lot was sold upon execution, at public auction.

11 That the other parties mentioned in said "Exhibit D," were respectively in open and notorious possession of the property in said exhibit mentioned as belonging to and claimed by them respectively, and improved at great expense, called the same their own property, and as owners had the same assessed for taxes and paid said taxes thereon, and exercised divers other acts of ownership over the same. And the said L. M. Starr, your orator, is informed and believes, and so charges, that continuously, from and after the said thirteenth (13th) day of April, in the year 1850, until some time in the year 1851, the said Benjamin Stark had an agent and attorney in fact residing on the tract of land released to him by said Lownsdale, Coffin, and Chapman as aforesaid, and occupying an office and place of business within a few rods of the said block eighty-one, (81,) and said agent knew well the claims and acts of ownership by the said parties during all that time; and the said Stark himself, in person, during the same period, made two or more visits to Portland, and was fully informed of the claims, occupation, and other acts of ownership of said parties; and your orator further says, that said Stark did himself remove to Portland, and fix his residence on the said Stark tract, in the year 1851, and thereafter continuously, until

some time in the year 1861, resided and had a place of residence near said block eighty-one, (81,) and was almost daily cognizant of the claims and acts aforesaid of the said occupants of said property during the whole of said period.

And your orator further alleges and charges that said Benjamin Stark, being fully informed of the matters alleged above, and being personally present as aforesaid, stood by and acquiesced in and consented to the claims of ownership set up by the several parties aforesaid
12 during all that period, from the year 1851 to the year 1861, and did not forbid the making of any of the improvements above mentioned; but, on the contrary, repeatedly told said parties, and especially your orator, that he had no claim to or interest in the said land, to wit: lots one (1) and two, (2,) and the north half of lot four, (4,) in said block eighty-one, (81,) and that whatever legal title he might obtain to said tract of land, under the act of 27th of September, 1850, above mentioned, he would hold for the use and benefit of, and would convey to, the occupants of said property.

And your orator is informed and believes, and so charges the fact to be, that it was on account of the said acts and representations and agreements of said Benjamin Stark, that the said several claimants of said property, prior to your orator, paid their money for the same, and made their improvements mentioned, and, but for the said acts and representations of said Stark, they would not have made said improvements, nor invested their money; and, as to himself, your orator alleges and charges that said Stark, at divers times, prior to the year 1863, assured your orator that the title of said occupants of said property was good, and that he, said Stark, had no claim to or interest in the same; and by reason of such acts, assurances, and representations of said Stark, he, your orator, paid a large sum of money for said property, to wit, the sum of six thousand dollars ($6,000) and more, and your orator avers that, during the period of from your orator and A. M. Starr, the brother of your orator, were tenants in common of and claimed said property jointly, and during said time they, jointly, made permanent and expensive improvements thereon, to wit, built and repaired houses, paid for street improvements, and built a heavy stone wall on the
13 side of lots one (1) and two, (2,) next to the Willamette River, all costing and of the value of six thousand five hundred dollars, ($6,500,) of all of which said Benjamin Stark had notice, but made no objection, nor gave your orator nor his co-tenant, said A. M. Starr, any reason to believe that he, said Stark, intended to set up any claim to said property; and your orator avers that all said improvements were made by said parties in good faith, and in the belief that they had a good title to said premises, and that said Stark would hold the title which he had acquired to the tract of land aforesaid, by virtue of and under the said act of the 27th of September, 1850, for the benefit of your orator, as to said lots one (1) and two, (2,) and the north half of lot four, (4,) in said block eighty-one, (81,) as he had assured your orator he would do; and that at some convenient time and opportunity he would make such deed of confirmation to your orator as might be necessary to quiet said title and remove all clouds therefrom.

And your orator charges that said Stark was several times present on the ground while your orator and said A. M. Starr were occupied in improving said premises as aforesaid, and told your orator and said A. M. Starr that their title to said property was good, and that their possession would not be disturbed by him; yet so it is, the said Stark, in the latter

part of the year 1863, after said stone wall had been constructed, having received a patent for the tract of land which said Lownsdale, Coffin, and Chapman had released and abandoned to him, began wrongfully and fraudulently to deny the title of the occupants of said land, block eighty-one, (81,) and fraudulently to pretend he owned the same, and wrongfully and fraudulently refused to confirm the title of your orator
14 and said A. M. Starr, and still wrongfully and fraudulently refuses to confirm the title of your orator, or to allow your orator to have peaceable and quiet occupation, but is wrongfully, unjustly, and fraudulently prosecuting said action at law; and your orator avers that said lots, one, (1,) two, (2,) and the north half of lot, (4,) in block eighty-one, (81,) have been greatly increased in value by the improvements made thereon by your orator and those under whom he claims, and said parcles of land are of the value of more than ten thousand dollars, ($10,000.)

And your orator avers and charges the fact to be, that the claims set up by said Stark to said parcels of land against your orator are unjust, against equity and good conscience; and your orator avers that by reason of the matter alleged in this bill of complaint, the said Benjamin Stark is estopped from claiming said parcels of land, or any of them, and is bound and obligated to recognize and confirm the title of your orator, and your orator has no adequate remedy or defence at law to the said action of said Stark and to the claim set up by him, and unless the said Benjamin Stark be restrained from prosecution of said action and setting up of said claim, your orator will suffer great and irreparable loss and damage, and be wholly without remedy.

Wherefore your orator prays for process of subpœna against said Benjamin Stark, requiring him to answer the allegations of this bill, or have the same taken pro confesso, and decree passed against him; and your orator prays that a preliminary injunction may issue out of this honorable court, enjoining and restraining said Benjamin Stark from prosecuting said action at law for the recovery of the possession of said lots one, (1,) two, (2,) and the north half of four, (4,) in fractional block eighty-one, (81,) in the city of Portland, and that, upon final hear-
15 ing, your honors will adjudge and declare that, as against said Benjamin Stark, your orator is the owner of said premises and entitled to have the quiet possession thereof forever, and that said Stark be enjoined from prosecuting any action at law against your orator, his heirs, or assigns, for the recovery of the possession of said parcels of land, or any of them, and excluded from any lien or estate or interest therein adverse to your orator, and required to release to your orator such title as he may have or claim by virtue of said act of Congress of September 27th, 1850, and of his patent issued under said act, and within a reasonable time, to be named by the court, to execute and deliver to your orator a good and sufficient deed of release and confirmation for all of said parcels of land, and for all such other and further relief as may be consonant to law and equity.

And your orator will ever pray.

LOGAN & SHATTUCK, AND
W. W. CHAPMAN,
Solicitors for Complainant.

DISTRICT OF OREGON,
State of Oregon, ss:

I, E. A. Starr, being duly sworn, say that I am attorney in fact of L. M. Starr, complainant in this suit, and I make this affidavit of verifica-

tion for said L. M. Starr because said L. M. Starr is now temporarily absent from the district of Oregon, and cannot, for that reason, verify this complaint himself; and I say I verily believe that the foregoing bill of complaint is true.

E. A. STARR.

Subscribed and sworn to before me this 18th day of February, A. D. 1870.

R. WILCOX, *Clerk*,
By ED. WILCOX, *Deputy*.

16 EXHIBIT A.

This indenture, made the first day of March, one thousand eight hundred and fifty, by and between Benjamin Stark, of the town of San Francisco, California, party of the first part, and Daniel H. Lownsdale, of Portland, Oregon, party of the second part, witnesseth: Whereas it is deemed expedient by the parties hereto to determine, settle, and adjust the title and possession of certain lands hereinafter described, and to preclude all future controversy in the premises: now, therefore, the parties aforesaid, in consideration of the mutual covenants and agreements hereinafter contained, and of one dollar by each of said parties to the other in hand paid, the receipt whereof is hereby acknowledged, have concluded, covenanted, and agreed as follows:

The said party of the first part has bargained, sold, remised, released, and forever quit-claimed, and by these presents does bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, his heirs and assigns, all his right, title, and interest in all that portion or parcel of a certain tract of land known as "the Portland land-claim," and lying in the county of Washington (late Tuality,) in Oregon, aforesaid, on the west bank of the Willamette River, situate south of a certain line described as follows:

Beginning at a point on the west bank of said river, at low-water mark, easterly from the southeast corner of a certain tract of land, or oblong piece of ground, known on the plat of said town of Portland as Stark's block, where a straight line running parallel with Washington street (late Tuality) will cut the river aforesaid; thence running west-
17 erly to the southeast corner of said Stark's block; thence westerly, with the dividing-line between said Stark's block and an oblong piece of ground formerly known as the Pettigrove block, the same on which the dwelling-house is situated, now occupied by the said Daniel H. Lownsdale and Stephen Coffin, to the southwest corner of said Stark's block; thence westerly, with the same bearings of said line and parallel with Washington (late Tuality) street, to the outer line of the claim aforesaid; to have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereto belonging, unto the said party of the second part, his heirs and assigns, to his and their sole use and behoof forever, so that neither the said party of the first part, nor his heirs, nor any person claiming under him or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever; hereby ratifying and confirming, so far as his right, title, or interest is concerned, all conveyances which the said party of the second part has heretofore made or may hereafter make in the premises hereinbefore quit-claimed.

And the said party of the second part has bargained, sold, remised, released, and forever quitclaimed, and by these presents does bargain, sell, remise, release, and forever quitclaim, unto the said party of the first part, his heirs and assigns, all his right, title, and interest in all that portion or parcel of the tract of land known as the Portland land-claim, before mentioned and described, situate, lying, and being north of the line hereinbefore more particularly defined, set forth, and described: to have and to hold the same, with all the tenements and rights, privileges and appurtenances, thereto belonging or appertaining, unto the
18 said party of the first part, his heirs and assigns, to his and their sole use and behoof forever, so that neither the said party of the second part, nor his heirs, nor any person claiming under him or them, shall at any time hereafter by any way or means have, claim, or demand any right or title to the aforesaid premises or appurtenances as to any part or parcel thereof, forever; hereby ratifying and confirming all conveyances which the said party of the first part has heretofore made or may hereafter make, forever, in the premises so as aforesaid by the said party of the second part quitclaimed. And the said party of the first part, so far as his right, title, and interest are concerned, hereby ratifies and confirms all conveyances made by the said party of the second part, or his lawful attorney, previous to the first day of January, one thousand eight hundred and fifty, of the following lots, namely: Lots numbered one and three, in block twenty-six; lots numbered one, three, and four, in the block where the school-house stands; and lots numbered one, two, three, and four, in block numbered seventeen—all said lots lying north of said line, and being numbered and described on the plat of the town of Portland aforesaid; and the said party of the first part likewise ratifies and confirms all grants or conveyances made by said party of second part, or his lawful attorney, in good faith, and for a valuable consideration, to this date, subsequent to said first day of January, of lots situated north of said line: Provided always, and the said party of the second part hereby covenants for himself, his heirs, executors, and administrators, that he will pay over all sums of money which have since first day of January been or may hereafter be paid unto the said party of the second part, his heirs, executors, administrators, or assigns, for and in consideration of the grants and conveyances aforesaid.

19 And the said party of the second part further covenants, for himself, his heirs, executors, and administrators, that in case any person or persons holding or claiming under him, except the holders of those lots, and under the conveyance especially hereinbefore confirmed by the said party of the first part, shall refuse to ratify and confirm this indenture, he, the said party of the second part, will, at the option of the said party of the first part, at any time within six months from this date, cancel this indenture, and release all rights acquired under these presents by the parties hereto.

And the said party of the second part, for himself, his heirs, executors, and administrators, further covenants that he will, within six months from the date of these presents, out of the lots on the south side of the above-described line, and situate in said Portland claim, not now conveyed or granted away by the said party of the second part, or his lawful attorney, make, seal, and deliver to the said party of the first part a deed, good and sufficient in law, of any one unimproved lot of fifty by one hundred feet, which the said party of the first part may select, without costs or expense to the said party of the first part.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

BENJ. STARK. [L. S.]
D. H. LOWNSDALE. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN T. EMMET,
H. S. DODGE.

20 STATE OF CALIFORNIA,
District of California, ss:

Personally appeared, this second day of March, A. D. 1850, Benjamin Stark and Daniel H. Lownsdale, to me personally known to be the signers and sealers of the foregoing instrument, and acknowledged that they executed the same, and that it is their free act and deed for the purposes therein mentioned.

Before me—

JOHN W. GEARY,
First Alcalde of the District of San Francisco.

STATE OF CALIFORNIA,
District of San Francisco, ss:

I, Henry L. Dodge, clerk of the alcalde's court of first instance, within and for the district of San Francisco aforesaid, hereby certify that John W. Geary is, and was at the time of taking the foregoing acknowledgement, first alcalde of the district of San Francisco aforesaid, and that his signature thereto affixed is genuine.

In witness whereof I have hereunto set my hand and the seal of said court this second day of March, A. D. 1850.

(Signed) H. L. DODGE,
Clerk Court First Instance Dist. of San Francisco.

Received November 22d, A. D. 1850.

(Signed) WILLIAM GEIGER,
Co. Recorder.

21 EXHIBIT B.

We, Stephen Coffin and W. W. Chapman, partners with Daniel H. Lownsdale, in the town of Portland, hereby ratify and confirm a certain agreement between Benjamin Stark and D. H. Lownsdale, bearing date the first day of March, A. D. 1850, respecting an adjustment of title, hereby placing the disposition of property up to notice of said adjustment upon the same footing with the disposition of property before the first day of January last.

In testimony whereof we have hereunto set our hands and seals this the 13th day of April, A. D. 1850.

(Signed) S. COFFIN, [L. S.]
W. W. CHAPMAN. [L. S.]

EXHIBIT C.

PORTLAND, O. T., *April* 15, 1870.

I ratify the above agreement as far as my interest is concerned in said property.

(Signed) JOHN H. COUCH,
For BENJ. STARK.

Recorded this 23d day of November, A. D. 1850.

WILLIAM GEIGER,
Co. Recorder.

22 EXHIBIT D.

Lot.	Block.	Grantor.	Grantee.	Date.
1	81	W. W. Chapman....	Winter & Latimore.....	January 30, 1851.
"	"	Winter & Latimore, by shff.	W. H. Barnhart.....	July 24, 1852.
"	"	Wm. H. Barnhart...	C. A. Eastman.....	
"	"	C. A. Eastman.....	Henry Hale & C. Hutchins..	June 22, 1857.
N. ½ 1	81	Chas. Hutchins...	A. M. & L. M. Starr.....	May 19, 1858.
"	"	Henry Hale.....		
"	"	A. M. Starr.....	L. M. Starr.....	Sept'ber 18, 1865.
S. ½ 1	81	Henry Hale.....	Chas. Hutchins.....	May 20, 1858.
"	"	Chas. Hutchins.....	A. M. Starr & A. P. Ankeny.	July 19, 1859.
"	"	A. P. Ankeny.....	L. M. Starr.....	July 25, 1860.
N. ½ 2	81	W. W. Chapman...	J. B. V. Butler.....	October—, 1850.
"	"	J. B. V. Butler.....	J. W. McCay.....	October 9th, 1850.
"	"	J. W. McCay.....	A. M. Starr	Sept'ber 22, 1851.
"	"	A. M. Starr.....	L. M. Starr	Sept'ber 18, 1865.
S. ½ 2	81	W. W. Chapman....	L. M. Starr	October 3, 1850.
N. ½ 4	81	W. W. Chapman....	Jackson Powell	Nov. 11, 1850.
"	"	Jackson Powell.....	A. M. & L. M. Starr.....	August 12, 1856
"	"	A. M. Starr.....	L. M. Starr.....	Sept.——1865.

23 In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, RESPONDENT. } In equity.

It is hereby stipulated that the last amendment to the bill may be re-instated, operating from this date; and the service of copy is hereby waived. This is in no manner to modify the order for making up pleadings. The amendment allowed is of date Dec. 3d, 1870.

W. W. CHAPMAN,
Sol. Compt.
WM. STRONG,
Sol. for Deft.

PORTLAND, 18*th Sept.*, 1871.

24

25 In the circuit court of the United States for the district of Orogon

LEWIS M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, RESPONDENT. } In equity.

Amendments to complainant's bill, to be inserted immediately after the figures "$10,000," between the 8th and 9th lines of the 18th page, (printed copy, 9th line, page 14.)

Your orator further represents that, as he is informed and believes, the said defendant pretends and alleges that by reason of a certain decree rendered in the Supreme Court of the United States, at its December term, 1867, in a certain suit which had been appealed from the supreme

court of Oregon, wherein A. M. & L. M. Starr, your orators, were
26 plaintiffs, and Benjamin Stark was defendant, that your orator is now barred of maintaining this suit. Now your orator avers that, as he is informed and believes, that being in the possession of the premises as aforesaid, the said A. M. & L. M. Starr in the year 1864 instituted suit in the circuit court of the State of Oregon, for the county of Multnomah, against the said defendant, Benjamin Stark, for a specific performance of said contract specified and referred to in the original bill to which the defendant, Benjamin Stark, filed his answer, setting up his said patent as paramount to the legal or equitable claims of the plaintiff, or those under whom they claimed to have originally purchased said property, and to which answer the plaintiff replied specially; but upon objection to such replication the plaintiffs obtained leave, and on the 20th day of August, 1864, filed their amended complaint, perfect and complete in itself, setting forth that on the 7th day of December, 1860, a patent issued to the said city of Portland for the benefit of occupants of lots in said town; and that on the 8th day of December in the same year a patent issued to the said Benjamin Stark for the tract of land referred to in the original bill, part of the land patented to the city, but in which was contained a reservation in favor of said occupants of lots, and that the said Stark had procured and accepted the said reservations, representing and pretending that thereby the occupants of lots including the , your orator would be secured. The plaintiffs also in the same complaint set up their cause of action or suit under the said agreements in the original bill herein mentioned, and to such complaint the defendant demurred, and his demurrer was sustained; and the court ordered all that part of the complaint relating to the plaintiffs' claim under the city patent
27 struck out; but before any further proceedings were had in said suit, the court reconsidered its decision, and rescinded the same, and concluded that both causes of action were maintainable, but that they were different and independent causes of suit, and could not be joined in one suit or complaint, and thereupon ordered the plaintiffs to elect which of said causes of suit they would proceed upon; and by means of which order, and by compulsion thereof, the said plaintiffs did elect to proceed upon the patent to the city of Portland, and the invalidity of the patent to the said Benjamin Stark, and did, so far as said suit was concerned, abandon their claim or cause of suit under said agreements; and avers that said cause of action under said agreements, as hereinbefore set forth, was in nowise considered in said suit. That the said amended complaint, filed on the first day of November, 1864, was complete in itself, without reference to the original or previous pleading, setting forth the city patent, and the fact of occupancy of the lots by the plaintiffs, and set forth the said Stark's patent, and the reservations therein, based on a certificate of residence beginning on and continuing from the first day of September, 1849, and alleging that said Stark's residence had not begun and continued for four years prior to the date of said certificate, and that said Stark had procured it to be so proven falsely and fraudulently; and your orator avers that, as he is informed and believes, said complaint, in compliance with section 102 of chapter I of title XI of the Oregon Code, was a new pleading, complete in itself, having no reference to any former pleading, though called an amended complaint. That to the said last-mentioned
28 complaint the defendant filed his answer, denying the allegations therein contained, and issue being joined upon the question whether the said Benjamin Stark had, as he had caused it to

be proven to the surveyor-general, begun his residence upon said tract on or prior to the first day of September, 1849, and had thenceforward continuously resided thereon for four years. And your orator avers that, as he is informed and believes, the only issue tried and the only facts found by the supreme court and circuit court of Oregon in the said trial were, that the said Benjamin Stark had not so begun and continued his residence upon the said tract of land, and that the said defendant had no possession and residence upon said tract of land on and continuously from the said first day of September, 1849. And your orator avers that, as he is informed and believes, that the Supreme Court of the United States did not pass upon the said issues or facts so found, but by its judgment and decree establishes that the patent to the city of Portland was void and of no effect, and the plaintiffs in the said suit could have no right thereunder to maintain their said suit.

W. W. CHAPMAN,
Compt.'s Sol.

29 DISTRICT OF OREGON:

I, Lewis M. Starr, being sworn, say that the statements in the foregoing amended complaint, so far as stated from his own knowledge, are true; and those stated as from information he believes to be true.

LEWIS M. STARR.

Subscribed and sworn to before me this 3d day of December, A. D. 1870.

R. WILCOX, *Clerk*,
By ED. WILCOX, *Deputy*.

30, 31 In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, DEFENDANT. } In equity.

The answer of Benjamin Stark, defendant, to the amended bill of complaint of Lewis M. Starr, complainant.

This defendant now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had to the many errors, uncertainties, and other imperfections in the said complainant's amended complaint, or unto so much and such parts thereof as this defendant is advised is or are material, or necessary for him to make answer unto, this defendant answering, says:

32 That he admits that, at the time of the filing the original bill of complaint herein, namely, on the 2nd day of August, 1870, the said complainant was in possession of said lots, numbers one, two, and the north half of lot number four, in block number eighty-one, in the city of Portland; but this defendant avers the fact to be that he, this defendant, is now in possession of the said lots, the said possession having been delivered to him on a writ of possession, issued upon the judgment recorded against the said complainant, on the 15th day of February, 1870, which said writ was issued and served upon the 18th day of August, 1870, by delivering the possession to this defendant, and that he has ever since held and continues to hold the same.

And this defendant, further answering, says that it is not true, and he denies that the said complainant has a good equitable estate or title

in or to said parcels of land, or in or to any of them, or to any part thereof. This defendant says that it is not true that the said Daniel H. Lownsdale, Stephen Coffin, and William W. Chapman, were tenants in common, or were in possession at any time from the 13th day of December, 1849, to the 13th day of April, 1850, inclusive, of a tract of land of six hundred and forty acres, more or less, within which tract the lots in controversy herein or any of them are situate. And he denies the allegations of the complaint of complainant in that behalf.

And this defendant, further answering, says that as to the allegations of complainant's said bill, that the said Lownsdale, Coffin, and Chapman were, at or during the time and period aforesaid, expecting to obtain title from the United States to said tract of land, and had
33 platted, laid off, surveyed, and subdivided the same into lots and blocks to be occupied for the purposes of trade and commerce, and had undertaken and promised the occupants of said lots, under them as aforesaid, that they, the said Lownsdale, Coffin, and Chapman, would use diligence, and every reasonable effort, to obtain title to the tract, including said lots and blocks, from the Government of the United States, and had agreed, in the event of obtaining such title, to confirm the title of purchasers and occupants of lots and blocks sold as aforesaid, this defendant has no other knowledge save by said complainant's bill, and therefore cannot state his belief concerning the same, but denies the same.

This defendant, further answering, says that he denies that prior to the 13th day of April, 1850, he had knowledge of the possession, claims, or undertakings of the said Lownsdale, Coffin, and Chapman; but he admits that during said period he did claim, adverse to all other persons, (except the said Daniel H. Lownsdale, who, in common with him, was a joint owner, each of one undivided half,) one undivided half of the tract of land referred to in complainant's bill, of about six hundred and forty acres, called, for convenience, the Portland town-site; and he avers that the grounds of his said claim are not fully or correctly set out in complainant's said bill, but that the same are as follows, namely: Some time during the year 1845, as defendant is informed and believes, Francis W. Pettygrove and A. L. Lovejoy, each of them being a citizen of the United States and married men, and over the age of twenty-five years, settled upon that portion of the public lands of the United States called in said complainant's bill the Portland town-site, containing about 640 acres, and were jointly and equally interested in
34 said land and in claiming the same, and laid out a town thereon and called it Portland. And this defendant avers that in the latter part of the year 1845 the said A. L. Lovejoy, for a valuable consideration to him paid by this defendant, sold and conveyed to this defendant one undivided half of said claim, and this defendant caused said conveyance to be recorded, and entered into the possession of an undivided half of said Portland town-site, so called, and he, together with the said Francis W. Pettygrove, were and continued to be in the open and undisputed possession of said Portland town-site, each claiming one undivided half of the same. And after the conveyance from said Lovejoy to this defendant, this defendant and the said Pettygrove made improvements and engaged in the business of selling town-lots on said claim under the laws and usages of the provisional government of Oregon; and that, on or about the 22d day of September, 1848, the said Francis W. Pettygrove sold and conveyed his interest in said claim and business as aforesaid to the said Daniel H. Lownsdale, who took the same with full knowledge of the claim, title, and possession of this defendant as ten-

ant in common and owner of one undivided half of said claim and business, and acknowledged the defendant as equally with himself entitled to one undivided half and in possession of said Portland town-site in common.

This defendant admits that on the first day of March, 1850, he was in San Francisco, but he denies that that was his place of residence, and avers that his residence was at that time in Portland, Oregon, and on the land known as the Portland town-site claim, and north of Stark street.

35 This defendant, further answering, denies that on the first day of March, 1850, or at any other time, he undertook to determine, adjust, and settle with the said Daniel H. Lownsdale the title and possession of said land, known as the Portland town-site, but on the contrary, avers the fact to be that there was at that time no controversy between this defendant and the said Daniel H. Lownsdale in regard to the title or possession of said tract of land, but each admitted the joint ownership and possession of the other, and to the knowledge of this defendant there were no other joint owners or proprietors, except the said Lownsdale and this defendant. This defendant, further answering, admits that at San Francisco, on the first day of March, 1850, he, with the said Daniel H. Lownsdale, entered into the indenture or deed, in said complainant's bill set out as Exhibit A; he denies that the purpose of said indenture and deed was to settle the title or possession of said tract of land, but avers that its sole purpose was to sever the joint interest of this defendant and the said Lownsdale in the entire tract, so as to give to the said Lownsdale the exclusive ownership and possession of all south of Stark street, and this defendant the exclusive ownership and possession of all north of said Stark street, in the city of Portland, on the Portland town-site, so called, with the exceptions named in the indenture. And this defendant avers that he then held the title and possession of said land, independent of any agreement with the said Lownsdale, and has ever since held possession of the same, save and except certain lots enumerated in said indenture, and certain other lots and parcels disposed of by this defendant, and has acquired title to

36 the same by virtue of his own personal residence, occupation, and cultivation, and making the proper proofs in the Land-Office of the United States, under a law of the United States, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of said public lands," approved September 27, 1850, and does not, in any manner, either legally or equitably, hold or claim his title through the said Lownsdale, Chapman, and Coffin, or under either of them, or under said indenture between himself and the said Lownsdale, executed March 1, 1850. And this defendant admits that, in and by said indenture, he undertook to ratify and confirm all conveyances of lots and blocks which had been, prior to the 1st day of January, 1850, made by the said Lownsdale, or his lawful attorney, in that part of the Portland town-site, north of Stark street, and, upon certain terms and conditions, in said indenture expressed, confirm such conveyances of lots and blocks as had been made in good faith, and for a valuable consideration, by the said Lownsdale or his lawful attorney, after the first day of January, 1850, and prior to the first day of March, 1850.

And this defendant, further answering, says that he has not been informed, save by said complainant's bill of complaint, whether the said Coffin and Chapman had notice or knowledge of said indenture or the provisions thereof, prior to the 13th day of April, 1850, and cannot form

any belief of the same. And this defendant, further answering, says that he has not been informed, save by the complainant's bill, and cannot set forth as to his belief or otherwise, whether on the 20th day of March, 1850, the said Chapman was the attorney in fact of the
37 said Lownsdale, and, if so, for what purposes, and with what powers, or whether the said Coffin and Chapman were at that time ignorant and without notice of the transaction and indenture of the first of March, 1850, between the said Lownsdale and this defendant, or whether the said Coffin and Chapman made, or attempted to make, any transfer or conveyances, and if any, what, between themselves and Daniel H. Lownsdale, by way of partition or otherwise, and he denies that said block number eighty-one, which embraces the property in controversy, was conveyed to said W. W. Chapman, and leaves the complainant to prove the said allegations in this behalf as far as he may be advised. And this defendant admits that in and by said indenture it was provided that in case any person or persons, holding or claiming under said Lownsdale, except the holders of those lots under said conveyance thereinbefore confirmed by this defendant, should refuse to ratify and confirm said indenture, the said Lownsdale would, at the option of this defendant, at any time within six months from March 1st, 1850, cancel said indenture, and release all rights acquired under the same.

And this defendant, further answering, denies that the said Coffin came into possession, or held the land in controversy in this suit, or any part of the same, by virtue of conveyances or writings made on the 30th day of March, 1849, or at any other time, between him, the said Coffin, and Daniel H. Lownsdale, and he denies that the said Chapman came into possession of or held any part of said lots or lands, by virtue of agreements or conveyances made between the said Chapman and the said Lownsdale and Coffin, on the 13th day of December, 1849, or
38 at any other time; and he denies that such 'leged facts and transactions were known to him on the first day of March, 1850.

And this defendant denies that the said Coffin and Chapman were the persons referred to in the indenture between this defendant and the said Lownsdale, of the 1st March, 1850, as the persons whose refusal to ratify said indenture was provided for therein, but avers that that proviso was inserted for the purpose of giving this defendant the right to rescind, if any person should claim an interest in said tract of land to the prejudice of this defendant's rights, and not for the purpose of allowing an alteration to be made in the terms of said indenture.

And this defendant, further answering, denies that the said John H. Couch was the attorney in fact of this defendant, and directed or empowered in writing to settle or adjust with said Coffin, and those claiming with or under him, the title or possession of said adverse claimants to said Portland town-site, or to the lots in controversy herein.

And this defendant, further answering, says that he denies the allegations in said bill of complaint respecting the acts of the said Couch as the attorney of this defendant, in applying to the said Coffin and Chapman for a ratification of said indenture on their part; and this defendant denies that he ever agreed by the said Couch, or his authorized attorney in fact, or in any other way, to any conditions, exceptions, or alterations in or to said indenture; but he alleges that the writings marked as Exhibits "B" and "C," in said bill of complainant,
39 bearing date the 13th day of April, 1850, and purporting to have been executed by the said Coffin and Chapman, and by said Couch, were so added without the knowledge or consent of this defend-

ant, and when his attention was called to said writings he repudiated the same and disavowed any authority in the premises of the said Couch as the agent or attorney of this defendant.

And this defendant, further answering, alleges that it was never agreed or understood by him, or by any authorized attorney in fact, acting on behalf of this defendant, that the said indenture should be so modified as to make the terms and conditions thereof apply to and include said block number eighty-one, or any of the lots therein, as though it had been disposed of by the said Lownsdale, or his lawful attorney, prior to January 1st, 1850.

And this defendant, further answering, admits that shortly after the 13th day of April, 1850, he came to Portland, from which place he had been temporarily absent; but he denies that he was furnished by the said Chapman with a list of all the property to which it was claimed by Coffin and Chapman the said indenture and the said modification thereof was intended to apply; but he alleges the fact to be that he applied to the said Chapman for a list of all conveyances made by the said Lownsdale subsequent to the first day of January, 1850, and prior to the first day of March, 1850, north of said line of Stark street, and the consideration therefor, and that, thereupon, the said Chapman claimed to this defendant that the entire parcel of land known as block 81, in said city of Portland town-site, and which embraces the property in controversy herein, was, by virtue of the indenture and the ratification and modification thereof, and the assent of the said Couch as the attorney of this defendant, one of the lots or parcels of land which had been disposed of, and the sale of which this defendant was bound to ratify; and this defendant denies that he assented to, or acquiesced in, what had been done, as is alleged aforesaid, by the said Couch as his agent, or in the claim of said Chapman to said block 81, or to any part or parcel thereof; but, on the contrary, he avers that upon receiving such information he denied the same, and disavowed any authority on the part of the said Couch or other parties in the premises.

40

And this defendant, further answering, says that he denies that by reason of the stipulation, agreements, and understandings with or of this defendant, that the said Coffin and Chapman relinquished or abandoned to this defendant their proprietary claim to the tract of land included in said indenture, and specified therein as released by the said Lownsdale to this defendant; and he denies that the said Coffin or Chapman had any proprietary or other lawful claim to the same, or to any part thereof, especially to the lands or lots in controversy herein.

This defendant, further answering, says that he denies that it was the true intent of said writings, copies of which are contained in said complaint, marked "Exhibits A, B, and C," that it was understood by the parties thereto that this defendant was bound to ratify sales and confirm to the occupants of lots and blocks conveyed and disposed of by the said Lownsdale, or his attorney, prior to said 13th day of April, 1850; this defendant denies that in and by said writings he undertook or was bound to ratify or confirm to the occupants thereof said block number 81, or any lot or part thereof.

41

And this defendant, further answering, denies that on entering upon said tract and claiming the same, including said block number 81, as proprietor of the same, he was to be considered or held as trustee for any of the occupants of said block 81, or was to get and hold any title he might obtain in or to said block for the use and benefit of said occupants, or any of them; and he avers that he entered into possession and held the same, especially said block 81, solely for his

own use and benefit, and to obtain the title for himself; and this defendant denies that said Coffin and Chapman, or either of them, had any proprietary claim or interest in said block 81, or that they ever abandoned any such proprietary claim to this defendant. This defendant denies that he entered upon or held said tract by virtue of any abandonment by the said Coffin and Chapman, or either of them; but, on the contrary, he avers that he entered upon and held the same by virtue of his original conveyance from the said Lovejoy, and possession thereof in common with the said Lownsdale; not recognizing any right or title in the said Coffin and Chapman, or either of them, or claiming any right or title under them, or either of them; neither did he recognize the right or title of said Chapman, or of any one claiming under him, to said block 81, or to any lot or part thereof.

This defendant, further answering, admits that he did not rescind the said indenture.

This defendant, further answering, admits that he made claim to said tract of land under the act of Congress, approved September 27th, 1850, entitled "An act to create the office of surveyor-general of the
42 public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," and that, on the 10th day of September, 1853, he received from the surveyor-general of the public lands in Oregon a donation-certificate for the same, numbered 69, for said tract of land; and that, on the 8th day of December, 1860, a patent for said land was duly issued to him by the proper officer of the United States, whereby he became and is the legal owner of said block number eighty-one; but he avers that he did not receive said certificate, or said patent, by reason of, or on account of, any abandonment by the said Coffin and Chapman, or by either of them; but, on the contrary, the same were based wholly upon a personal settlement, residence upon, and cultivation of said lands, commencing on the first day of September, 1849, and continuing up to the date of said donation-certificate, and upon a full compliance upon the part of this defendant with the said act of Congress approved 27th September, 1850, hereinbefore referred to.

And this defendant, further answering, says that he has no knowledge, save by said bill of complainant, whether on the 3d of October, 1850, or at any other time, the said W. W. Chapman sold for a valuable consideration, and if so, for what consideration, to the said L. M. Starr, complainant, the south half of said lot 2, in said block 81; or whether on the 11th day of November, 1850, or at any other time, the said Chapman, for a valuable consideration, and if so, for what consideration, sold and conveyed to Jackson Powell said lot number 4, in said block number 81; or whether on the 30th day of January, 1851, or at any other time, the said Chapman, for a valuable consideration, and if so, for what consideration, sold and conveyed to Winter & Latimer, lot one in
43 said block 81; or whether on the day of October, 1850, the said Chapman, for a valuable consideration, and if so, for what consideration, sold to J. B. V. Butler the north half of said lot 2 in said block 81; or whether the said Chapman made any of said alleged sales, and, therefore, cannot express his belief concerning the same.

And this defendant, further answering, denies that the said Chapman, or any of his alleged venders, had possession with the acquiescence of this defendant.

And this defendant, further answering, says that he has no knowledge, save as he is informed in said complainant's bill, whether said lots one, two, and the north half of lot four were finally conveyed to the

complainant; and, if so, by what chain of conveyances, and therefore cannot state his belief concerning the same.

And this defendant, further answering, says that he was temporarily absent from Portland on a visit to the Eastern States, from October, 1850, to June, 1851, during which period it is alleged in said complainant's bill that Winter & Latimer went into open and active possession of lot one, (1,) and commenced improvements thereon; that during his said absence he admits that he was represented by an agent, resident in Portland, but he denies that he had any knowledge or that his agent, otherwise than he is informed by said complainant's bill, had any knowledge of any acts or claims of said complainant, or of any other person or persons, as is alleged in said complainant's bill, touching the ownership of the said premises; and he denies that by any act or omission of his said agent, or of his own, he, this defendant, was prejudiced in his title to said premises, or that said complainant, or any other person or persons, acquired any right or title to the same as against this defendant.

44 This defendant, further answering, says that he admits that, with the exception of a temporary absence in the years 1856 and 1857, he was continuously in Portland from some time in the year 1851 to some time in the year 1861, and was cognizant of the property and its uses; but he denies that he stood by and acquiesced in, or in any way consented to, the claims of ownership set up by the said complainant, or by any other person or persons, to the said premises during the period aforesaid, to wit, from 1851 to 1861, as is alleged by and in said complainant's bill of complaint.

This defendant, further answering, says that he denies that he repeatedly or ever told said complainant, or anybody else, as is alleged in said complainant's bill, that he, this defendant, had no claim to or interest in the said land, to wit, lots one (1) and two (2) and the north half of lot four, (4,) in block eighty-one, (81,) and that whatever legal title he might obtain thereto under the act of September 27th, 1850, he would hold for the use and benefit of, and would convey to, the occupants thereof; and he denies that he ever made any representations and agreements whereby the said complainant, or any other person or persons, have been induced to pay their money for the same and make improvements thereon; and he denies that he, at divers times, or at any time prior to 1863, assured said complainant that the title of the occupants of said property was good, and that he, this defendant, had no claim to or interest in the same, or that said complainant has been, by said alleged assurances, or by any representations of this defendant, induced to invest any sum of money therein or thereon; but he alleges the truth to be that he has uniformly and always claimed

45 that the said property in controversy was owned by him; that he claimed the same for his sole use and benefit, and that he intended to perfect the title thereto whenever it could be done under the laws and practices of the United States in such case made and provided; that he was bound by his indenture of March 1st, 1850, only to ratify and confirm sales made by Daniel H. Lownsdale, or his lawful attorney, for a valuable consideration, within the donation claim of this defendant and prior to said March 1st, 1850, and that he would ratify and confirm such sales, and none other.

This defendant, further answering, says that he denies that he ever gave any assurance to said complainant, or to A. M. Starr, his brother, as is alleged in said complainant's bill, and who are alleged to have jointly invested moneys in improvements of said premises, that he, this

defendant, would, at some convenient time and opportunity, make to them, or either of them, such deed of confirmation as might be necessary to quiet said title and remove all clouds therefrom; and he, this defendant, denies that he was several times, or at any time, present on the grounds while said complainant and his brother aforesaid were so occupied in improving said premises, and told them, or either of them, as is alleged in said complainant's bill, that their title was good, and that their possession would not be disturbed by him, this defendant; but he alleges it to be true that he has at all times and on all proper occasions, uniformly and publicly claimed the title to the premises in controversy to be in himself; that he has denied the claim of the said complainant at all times; and that particularly, in a conversation with complainant and his brother aforesaid, he, this defendant, repudi-
46 ated and denied the legal or moral obligation of the attempted modification by W. W. Chapman and Stephen Coffin and John H. Couch, of the indenture of March 1st, 1850, hereinbefore more particularly described, and then and there told said complainant, and his brother aforesaid, that he, this defendant, would not confirm or ratify any other than those sales made within the donation claim of this defendant by said Daniel H. Lownsdale, or his lawful attorney, prior to said March 1st, 1850. And this defendant, further answering, alleges that he has never at any time given complainant, or his brother aforesaid, any assurance, promise, or undertaking inconsistent with or contrary to the true intent and meaning of the declaration contained in the said conversation with said complainant and his brother aforesaid.

This defendant, further answering, denies that said complainant has, or ought to have, any title, legal or equitable, in and to the property aforesaid, to wit: Lots one (1) and two (2) and the north half of lot four, (4,) in block eighty-one, (81.)

This defendant, further answering, says that he admits that he claims that the defendant is barred of maintaining this suit by reason of the proceedings and decree in the suit in said amended complaint referred to, and in part set out; but he avers that said proceedings, as he is informed and believes, are not correctly set out in said complainant's amended bill, but the facts are as is hereinafter stated.

That on the 13th day of January, 1864, the said Lewis M. Starr, the complainant herein, and one Addison M. Starr, claiming to be in
47 possession of said lots one, two, and four, in said block 81, commenced in the circuit court of the State of Oregon, for the county of Multnomah, a suit or proceeding in equity, upon the equity side of said court, in which said suit the said Addison M. Starr and Lewis M. Starr were plaintiffs or complainants, and this defendant was sole defendant. That the said circuit court of the State of Oregon now is, and then was, a court of general jurisdiction in equity of the State of Oregon and the county of Multnomah, in said State. That the lands in controversy are situate in said county of Multnomah, in said State. That due service was made upon this defendant, and he appeared in said suit and defended the same, and said court had full jurisdiction of the subject-matter of the suit and of the persons of the plaintiffs and defendants. That the said plaintiffs in said bill of complaint among other things set forth and alleged that the said plaintiffs were the owners and in possession of said lots one, two, and four, in said block 81. That they, and those under whom they claimed, had been in possession since the 13th day of December, 1849, and had made large and valuable improvements thereon, of which this defendant had at all times notice. That this defendant claimed the title to the property by

virtue of a patent from the United States, and was threatening them with an action to recover the possession of said lots. The complaint also set forth the grounds of the plaintiffs' right to the premises to be certain agreements, representations, and doings of this defendant, which were the same in substance as the allegations of the said complainant in his bill of complaint herein. The said complainants' said complaint contained a prayer that this defendant set out by what title he claimed said property, and that he be compelled to release to said plaintiffs
48 all his right, title, interest, and claim in and to said property, and all the rights which he had acquired as a settler under the said act of the Congress of the United States approved September 27th, 1850, hereinbefore referred to; the said suit being in substance a suit or proceeding in equity to establish the equitable claim of said plaintiffs to the land then and now in controversy under and by virtue of the agreements, representations, and doings of this defendant hereinbefore referred to. That afterwards such proceedings were had that the said plaintiffs filed an amended complaint, in which said amended complaint the said plaintiffs did not set up any new cause of action or seek any other or different relief; but, as in their original complaint, they set up said agreements, representations, doings, and sufferings, or permissions, of this defendant, as one ground of their right to the relief sought. They also set up as another ground for relief that on the 7th day of December, 1860, a patent had issued to the city of Portland for the benefit of the occupants of lots in said town. That the patent issued to this defendant on the 8th day of December, 1860, contained reservations in favor of such occupants of lots, and this defendant had procured and accepted said reservations, representing and pretending that thereby the occupants of lots, including the said plaintiffs', would be secured; and the plaintiffs also set up in their amended complaint as another ground entitling them to the relief sought for, that this defendant had procured said patent to be issued to him upon false and fraudulent affidavits and proofs of residence and cultivation, and that the same was therefore void; and that said plaintiffs, and those under whom they claimed, had been the occupants of said lots 1, 2, and 4, since December 13th, 1849, and that said plaintiffs
49 were the beneficiaries under the patent to the corporate authorities of the town or city of Portland, of December 7th, 1860. And to this amended complaint this defendant, in due course of proceedings, filed his answer, denying all the equities of the same, and claimed in his answer to be the equitable and legal owner of said lots. That said plaintiff afterwards filed another amended complaint, which was in substance the first amended complaint engrossed, to which second amended complaint this defendant demurred, upon which said demurrer the court first made an order sustaining it, and ordered the allegations relating to the city patent to be stricken out, which order the said court afterwards rescinded, and ordered the plaintiffs to elect which ground of relief they would proceed upon. And this defendant denies that said court decided anything more in the premises than that the plaintiff could not proceed to claim that the defendant should convey a title to them under the agreements, promises, proceedings, and doings set up in said complaint in the same suit or proceeding, where they were seeking to set aside his title as fraudulent and void. And this defendant avers that the election to proceed on that portion of their alleged grounds for relief, wherein they sought to set aside and destroy the title of defendant on the ground that his claim of title was fraudulent and void, was not by compulsion, but was a voluntary abandonment of any other then existing claim for

relief founded on said alleged agreements, proceedings, and doings in this amended bill of said complaint. And this defendant admits that the last amended complaint, filed on the first day of November, 1864, was as a pleading complete in itself without reference to the preceding complaints; but he denies that it was complete, as showing all
50 the issues settled in said suit, and avers that it was only a part of the entire proceedings therein, and that it only formed or became the pleading or statement of plaintiffs' case, when the matters, by admission and abandonment, had been reduced to a single consistent issue.

And this defendant, further answering, says that on or about the 12th day of July, 1865, said cause came up for hearing before said circuit court of the State of Oregon for the county of Multnomah, upon the issues joined therein, as to whether the plaintiffs were entitled to the relief prayed for, and was heard by the court upon the proofs and allegations of the parties, and the said court rendered a decree in favor of the plaintiffs and against this defendant, wherein it was, among other things, adjudged and decreed that the patent hereinbefore referred to, issued to this defendant on the 8th of December, was, as against the said plaintiffs, void and of no effect; and that this defendant, and all claiming under him, or through or by him, be, and they were, perpetually enjoined and prohibited from commencing any suit to eject and turn the said plaintiffs, their heirs or assigns, out of the possession of the said lots numbered one, two, and four, in said block 81, in the city of Portland—that being the same property a portion of which is in controversy in this suit. That afterwards, on an appeal to the supreme court of the State of Oregon, said decree of said circuit court was wholly affirmed, and thereafter said cause was, under the laws and rules in such case made and provided, taken to the Supreme Court of the United States upon a writ of error, and upon a hearing therein, at the December term, A. D. 1867, it was, in substance and effect, adjudged and decreed that the decree of the supreme court of the State of Oregon in said
51 suit be and the same was thereby reversed with costs, and it was further ordered that said cause be remanded to the said supreme court of the State of Oregon, with instructions to enter a decree directing the circuit court of the State of Oregon for the county of Multnomah to dismiss the suit; and in order that such further proceedings might be had in such cause, according to the judgment and decree in the said Supreme Court of the United States, as according to right and justice and the Constitution and laws of the United States ought to be had therein, the said writ of error notwithstanding; and afterwards, according to the order and decree of said Supreme Court of the United States, a mandate was duly issued from said court to the supreme court of the State of Oregon aforesaid; and afterwards, at a term of said supreme court of said State, begun and held on the 7th day of September, 1868, said mandate from said Supreme Court of the United States having been duly received, it was ordered by said supreme court of the State of Oregon to be spread upon its records, which was done; and among other things it was, in substance and effect, ordered, adjudged, and decreed further, that the decree theretofore in said supreme court of the said State rendered, affirming the decree of the circuit court of the State of Oregon for the county of Multnomah, in said suit, be and the same was reversed. And it was further ordered, adjudged, and decreed, in substance and effect, by said supreme court, that the said decree of said circuit court be and the same was reversed, and that the said Addison M. Starr and the said Lewis M. Starr take nothing by their

said complaint; and further, that a mandate issue from said su-
52 preme court of the State of Oregon to said circuit court, for the execution of the said decree of the said supreme court; that said mandate duly issued, and on the 23d day of December, 1868, was duly entered of record in the said circuit court, where the same now remains of record, and is a full and final judgment and decree upon the matters involved in said suit, and upon all the equitable estate and interest of the said Addison M. Starr and Lewis M. Starr, the complainant herein, to the lots involved in this controversy.

And this defendant, further answering, says that he is informed and believes and avers that the said Addison M. Starr, on or about the 18th day of September, 1865, and after the commencement of the suit of the said Addison M. Starr and Lewis M. Starr, plaintiffs or complainants, against this defendant, in the circuit court of the State of Oregon for the county of Multnomah, hereinbefore referred to, in reference to lots one, two, and four, in block eighty-one, in said Portland town-site, conveyed to the said Lewis M. Starr all his, the said Addison M. Starr's, interest and estate in said lots, the same being the property a part of which is the property involved and in controversy in this suit.

And this defendant, further answering, avers that the said complainant hath not now any other or different interest or estate in the premises in controversy herein than he had at the commencement of the said suit in the said circuit court of the State of Oregon for the county of Multnomah, and the interest of the said Addison M. Starr so conveyed to him as aforesaid; and this defendant alleges that the said
53 complainant ought to be barred and concluded by the said decree and proceedings in the said circuit court of the State of Oregon for the county of Multnomah—the decree of the Supreme Court of the United States, and the decrees and proceedings hereinbefore recited—all of which this defendant is ready to show to the court, and to prove by the records thereof now remaining in the circuit court of the State of Oregon for the county of Multnomah.

And this defendant, further answering, alleges that he has obtained said patent from the United States in good faith for his own use and benefit, and that he is equitably, as well as legally, the owner thereof, and that he ought not to be estopped to deny that he obtained a title to said lots one, two, and the north half of four, in said block 81, in trust, or from claiming the same, or any portion thereof, as his own.

And this defendant expressly denies any trust, covenant, or agreement, affecting the title to said land, wherewith he is, by said amended bill of said complainant charged, without this: that there is any other matter, cause or thing in the said complainant's said amended bill contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All of which this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be herein dismissed with his costs and reasonable charges herein wrongfully sustained.

BENJ. STARK.

WM. STRONG,
Solicitor for Defendant.

54 SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York:

Benjamin Stark, the defendant in the above-entitled cause, and who subscribed the foregoing answer, being by me duly sworn, deposeth and saith that he has read the foregoing answer by him subscribed, and knows contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this 2nd day of November, 1871.

[L. S.] KENNETH J. WHITE,
Clerk of the Circuit Court of the United States for the Southern District of New York.

55 In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, DEFENDANT. } In equity.

The replication of the complainant to the defendant's answer.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said amended bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant;
56 without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as the honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

W. W. CHAPMAN,
Solicitor for Complainant.

1 *Testimony.*

In the circuit court of the United States for the district of Oregon, in equity.

LEWIS M. STARR, COMPLAINANT,
v.
BENJAMIN STARK, RESPONDENT.

LEWIS M. STARR, COMPLAINANT,
v.
BENJAMIN STARK, RESPONDENT.

CHARLES P. BACON ET AL., COMPLAINANTS,
v.
BENJAMIN STARK, RESPONDENT.

It is hereby stipulated, by and on the part of the complainants, severally, in each of the above-entitled causes, by W. W. Chapman, their attorney, on the one part, and by and on the part of the respondent, in each of the above-entitled causes, by William Strong, his attorney, on the other part, as follows:

First. That the testimony taken, or which shall be taken, in any one of said suits, or copies thereof agreed upon by the attorneys or solicitors of the parties, or certified by the clerk to be correct, may be used in evidence in any or all the other suits, subject, in each case, to all such exceptions as may be lawfully taken.

Second. That until the 15th of April next, the said several cases shall be open for taking evidence orally, or by deposition, provided that no testimony shall be taken or commission issued, during the absence of either of the said attorneys from the State, until the 20th day of March next.

Third. The deposition of William Geiger, taken in the suit of Henry Failing v. Benjamin Stark, now pending in the said United States circuit court, shall be considered and adopted as having been taken in these suits; and it, or copies of it, may be used as evidence in all of these suits, subject to all legal exceptions. This includes exhibits attached.

2 Fourth. Five additional days after the 15th of April, 1872, exclusive of Sunday, (if one intervenes,) is allowed both parties for taking evidence strictly in rebuttal of evidence not anticipated by either party.

Fifth. The evidence shall be finally closed on the 15th day of April, 1872, provided that depositions taken outside the State prior to that date, if returned any time prior to the 1st day of the May term of this court, shall, if otherwise competent, be received; and provided further, that the court may, on motion and reasonable notice to the opposite solicitor, extend the time for taking and closing the testimony for good cause shown, which the parties or solicitors cannot now anticipate.

Sixth. If the complainant or complainants shall desire the testimony of Addison M. Starr, he shall serve the solicitor of the defendant with a copy of his interrogatories and notice of the application before the 1st day of November next. And if the defendants desire to take the testimony of Benjamin Stark, he shall serve the solicitor of the complainant or complainants with a copy of his interrogatories and notice of the application on or before the 6th day of November next.

Seventh. The pleadings and evidence shall be printed at the joint expense of the parties, as the same shall be designated by the undersigned, and when so printed may be used for originals, errors and misprints to be corrected.

W. W. CHAPMAN,
Solicitor for Complainant.
WILLIAM STRONG,
Solicitor for Defendants.

PORTLAND, *October* 18, 1871.

Filed October 23, 1871.

RALPH WILCOX, *Clerk.*

In the circuit court of the United States for the district of Oregon, in equity.

LEWIS M. STARR
v.
BENJAMIN STARK;

THE SAME
v.
THE SAME;

and

CHARLES P. BACON ET AL.
v.
BENJAMIN STARK.

It is hereby stipulated by W. W. Chapman, attorney for the com

3 plainants, in the several causes above named, on the one side, and William Strong, attorney for the defendant, on the other side, that the following copies, marked Exhibits A, B, C, D, E, printed, and F, written, may be received as in place of the originals, of which they purport to be copies, without further proof of execution, and to be read as evidence in each of the above-entitled causes, subject to objection for want of relevancy, immateriality, or competency. The said exhibits are hereto attached, marked as above.

It is further stipulated that the defendant in the above cause, not yet at issue, may have four (4) weeks from the first day of November, 1871, in which to file answer; and that complainant may reply at any time before the May term of said court, hereby in no manner affecting the taking of testimony.

W. W. CHAPMAN,
Attorney for Complainants.

NOVEMBER 2D, 1871.

The admission of the exhibit "F" is not to be construed into an admission of the authority of W. W. Chapman to execute the same for or on behalf of the said Daniel H. Lownesdale.

WILLIAM STRONG,
Sol. for Defendant.

EXHIBIT A.

Know all men by these presents that I, Francis W. Pettygrove, of Tuality County, Territory of Oregon, as well for as in consideration of the sum of five thousand dollars, to me in hand paid, by Daniel H. Lownesdale, of the same county, the receipt whereof I do hereby acknowledge, as for the reservations hereinafter named, and divers other good causes and valuable considerations, have bargained, remised, and forever released, and by these presents for me and my heirs, executors, and administrators, do bargain, remise, and forever release unto the said Daniel H. Lownesdale, his heirs, executors, and administrators, all and singular my right, title, interest, claim, and demand at law and in equity, present and in expectancy, in and to the following-described land-claim, situate in said county of Tuality, on the west bank of the Willamette River, between the claims of William Johnson and John H. Couch, beginning at William Johnson's northeast corner, and
4 running down said Willamette River, at low-tide-water mark, to John H. Couch's southeast corner, and extending westward, bounded on the north by John H. Couch's claim and on the south by William Johnson's, with a line running from north to south, from said Couch's claim to said Johnson's claim, far enough to include six hundred and forty acres, being the same which I now live upon, the right of occupancy of which I purchased of J. , together with all and singular the houses, out-houses, fences, wharfs, and other improvements not hereinafter excepted and reserved from the operation of these presents, the following lands, blocks, and lots, together with the hereditaments and appurtenances belonging, are hereby expressly exempted and reserved from the operation of these presents; that is to say, blocks number one, (1,) two, (2,) and sixteen (16) entire, and lots number one, (1,) two, (2,) three, (3,) four, (4,) six, (6,) and eight, (8,) in block three, (3,) lots number one, (1,) two, (2), three, (3,) and four, (4,) and eight, (8,) and and lots number one, (1), two, (2,) three, (3,) four, (4,) in block five, (5,) and lots one, (1), two, (2,) and four, (4,) in block six, (6,) and lots number one, (1,) two, (2,) three, (3,) and four (4,) in block number fourteen, (14,) and

lots number one, (1,) two, (2,) three, (3,) four, (4,) and eight (8) in block number fifteen, (15,) and lots number one, (1,) two, (2,) in block number seventeen, (17,) and lots number one, (1,) two, (2,) three, (3,) and four (4) in block number eighteen, (18,) and lots number one, (1,) two, (2,) three, (3,) four, (4,) six, (6,) seven, (7,) and eight (8) in block number nineteen, (19,) and lot number four, (4,) in block number twenty-seven, (27,) and lots number one, (1,) two,(2,) three, (3,) four, (4,) and eight (8) in block number four, (4;) also a tract of land four hundred and sixty (460) feet long, by two hundred and thirty (230) feet wide, lying northerly from and next adjoining the ground upon which my dwelling-house is situated, known as Benj. Stark's block, which said lots and blocks so hereby expressly reserved have been sold by me as town property, to different persons, with the exception of the lots upon which my store is situated, reserved also for me. Given under my hand and seal this 22d day of September, in the year of our Lord one thousand eight hundred and forty-eight.

(Signed) FRANCIS W. PETTYGROVE. [SEAL.]

In presence of—
A. E. WAIT.
ALBERT E. WILSON.

5 EXHIBIT B.

Know all men by these presents that I, Daniel H. Lownesdale, of the county of Tualitin, in the Territory of Oregon, am held and firmly bound unto Francis W. Pettygrove, of the same county, in the penal sum of five thousand dollars, for the payment of which, well and truly to be made to the said Francis W. Pettygrove, his heirs, executors, administrators, and assigns, I bind myself firmly by these presents. Witness my hand and seal this twenty-second day of September, in the year of our Lord one thousand eight hundred and forty-eight.

The condition of the above obligation is such that whereas the above-bounden Daniel H. Lownesdale has this day purchased all the land-claim of the said Francis W. Pettygrove, situate in said county of Tualatin, upon which is laid out the village of Portland, except blocks one, two, and sixteen, and lots one, two, three, four, six, and eight in block three; and lots one, two, three, four, and eight in block four; and lots one, two, three, and four in block five; and lots one, two, and four in block six; and lots one, two, three, and four in block fourteen; and lots one, two, three, four, and eight in block fifteen; and lots one and two in block seventeen; and lots one, two, three, and four in block eighteen; and lots one, two, three, four, six, seven, and eight in block nineteen; and lot four in block twenty-seven; also a tract of land known as Benjamin Stark's two blocks, four hundred and sixty feet long by two hundred and thirty feet wide, as laid out and designated in the plat of said village or town of Portland, which said lots, blocks, and parcels of land are hereby expressly exempted and reserved from said sale. Now, if the said Daniel H. Lownesdale shall do and perform all reasonable acts, and make all reasonable exertion to procure from the territorial government of Oregon and the Government of the United States a good and sufficient title to and for the said land-claim, and shall in no way sell, transfer, or incumber the lands and tenements above specified and exempted from said sale, then the above obligation shall be void; otherwise in force.

(Signed) D. H. LOWNESDALE. [SEAL.]

Signed, sealed, and delivered in presence of—
A. E. WAIT.

6 EXHIBIT C.

Know all men by these presents that I, Daniel H. Lownesdale, of Tuality County, in the Territory of Oregon, as well for as in consideration of the sum of six thousand dollars, to me in hand by Stephen Coffin, of Oregon City, in the Territory aforesaid, the receipt whereof is hereby acknowledged, as also for the reservation and divers other good causes and valuable considerations, have bargained, remised, and forever released, and by these presents, for me and my heirs, executors, and administrators, do bargain, remise, and forever release unto the said Stephen Coffin, his heirs, executors, and administrators, all and singular my right, title, interest, claim, and demand at law and in equity, present and in expectancy, in and to the following-described land-claim, situate in said county of Tuality, on the west bank of the Willamette River, between claims of William Johnson, deceased, and John H. Couch, beginning at said William Johnson's northeast corner and running down the said Willamette, at low-tide-water mark, to John H. Couch's southeast corner, and extending westward, bounded on the north by John H. Couch's claim and on the south by William Johnson's claim aforesaid, far enough to include six hundred and forty acres; being the same which I now live upon, the right of occupancy of which I purchased from Francis W. Pettygrove, together with all and singular, with houses, out-houses, wharfs, and other improvements not before described, and reserved from the operation of these presents. The following lands in blocks and lots, together with the hereditaments and appurtenances thereunto belonging, are hereby expressly exempted from the operation of these presents; that is to say: blocks number one, two, and sixteen, entire; and lots number one, two, three, four, six, and eight in block number three; and lots number one, two, three, four, and eight in block number four; and lots number one, two, three, and four in block number five; and lots number one, two, and four in block number six; and lots number one, two, three, and four in block number fourteen; and lots number one, two, three, four, and eight in block number fifteen; and lots number one and two in block number seventeen; and lots number one, two, three, and four in block number
7 eighteen; and lots number one, two, three, four, six, seven, and eight in block number nineteen; and lot number four in block number twenty-seven; and also a tract of land four hundred and sixty feet long by two hundred and thirty feet wide, lying northerly from and west, adjoining ground on which my dwelling-house is situated, known as Benjamin Stark's block; also lots number one and two in block number twenty-seven; and also the lot of one hundred feet on Front street, and running back to water's edge, where Nathan Jones now lives; also, lot number five in block number three; also, the lot of ground opposite to the southeast corner of Gray's square, formerly occupied by F. W. Pettygrove & Co., fronting one hundred feet on Front street, and running to the water's edge, back, which said lots and blocks hereby expressed are hereby expressly reserved, and have been sold to different persons previously to this contract, as town property, to the different persons holding the same. Given under my hand and seal this 30th day of March, A. D. one thousand eight hundred and forty-nine.

D. H. LOWNESDALE. [SEAL.]

In presence of—
D. C. PARKER.
J. L. MEEK.

This agreement modified by agreement between Coffin, Lownesdale, and W. W. Chapman, making the three equal partners, as per agreement of this date, December 13th, 1849.

S. COFFIN.

EXHIBT D.

This article of agreement, made and entered into between Stephen Coffin, of Oregon City, of the Territory of Oregon, of the first part, and Daniel H. Lownesdale, of the other part, witnesseth: That the said Stephen Coffin, for and in the consideration of the sum of three thousand dollars paid for him by the said Daniel H. Lownesdale, in good and lawful money, agrees to make every exertion to obtain a title from the United States to six hundred and forty acres of land, where the town of Portland is situated, in Tuality County, and to divide the proceeds of any sales of lots or other property or privileges, now in and to the said land-claim and town property, or may hereafter be attached thereto, and to bear half the expenses of any improvements they may jointly agree to make on said claim, and in every lawful exertion to further the interests of said town-site; and the said Daniel H. Lownesdale hereby agrees
8 to furnish his half of any money necessary to secure the title from the United States, and use his exertions to further the said town property by every lawful exertion, personally, whenever it is in his power so to do, by assistance in the transaction of business when present, or in other countries, and pay one-half the expenses of any improvements the said Stephen Coffin and said Daniel H. Lownesdale shall jointly agree to make on the claim as sold by Daniel H. Lownesdale to Stephen Coffin. It is also jointly agreed that all the profits and all the losses, all rents, and all proceeds from sales shall be divided equally by the said parties as long as these articles shall be in force, which shall be until dissolved by mutual consent; at which time of dissolution of these articles the said Stephen Coffin hereby agrees to execute to the said Daniel H. Lownesdale a good title to the one-half of the before-named claim of land, and all the improvements thereon, in accordance to the title he now may or then may have obtained, to hold said land and town-site purchased this day from said Lownesdale.

The parties further agree that they will, at the close of every three months, make settlement on all business, and proceed to divide the profits and losses as beforesaid; and each of the parties agree to act as agent and keep a record of their proceedings and exhibit them as above described at their quarterly settlements.

Given under our hands and seals this 30th day of March, A. D. one thousand eight hundred and forty-nine.

S. COFFIN. [SEAL.]
D. H. LOWNESDALE. [SEAL.]

In presence of—
D. C. PARKER.
J. L. MEEK.

Cancelled by entering into articles of partnership with W. W. Chapman.

S. COFFIN.
D. H. LOWNESDALE.

EXHIBIT E.

Article of agreement between D. H. Lownesdale and Stephen Coffin, of the first part, and William W. Chapman, of the second part, witnesseth: That whereas the said Lownesdale and Coffin are joint owners of

the town of Portland, and the claim upon which said town are situated, the said claim being recorded and held in the name of said Lownesdale, now, the said Lownesdale and Coffin, for and in consideration of the sum of twenty-six thousand six hundred and sixty-six dollars, to be paid as hereinafter mentioned, doth bargain, sell, and quitclaim unto said Chapman an undivided one-third part of said claim, town-lots and improvements. Saving the recording of said claim by said Lownesdale, the said Lownesdale, Coffin, and Chapman are to be equal partners in the above-described property, excepting town-lots already sold, previous to this date, as town property, the payments for which are to be as follows: Three thousand three hundred and thirty-three dollars in hand, the remainder in four equal payments of six, twelve, eighteen, and twenty-four months in equal proportions to said Coffin and Lownesdale, each as per notes of this date. The said Coffin and Lownesdale are to occupy the house and four lots at a rent of five hundred and seventy-five dollars for one year, subject to other arrangements thereafter; the four lots and orchard north of the house to be used jointly, as it may suit. In all matters pertaining to the partnership, the legal advice and counsel is to be free of charge on the part of said Chapman. A book and plat of said town shall be kept at Portland by the parties, and regular entries made in said book of sales, receipts, and expenditures. The parties shall make mutual arrangements, from time to time, for the proper use of the funds of the firm. The parties shall take such steps for obtaining title from the Government as they may mutually agree upon.

In testimony whereof the parties aforesaid have hereunto set our hands and seals in triplicate this 13th day of December, A. D. 1849.

(Signed) S. COFFIN. [SEAL.]
D. H. LOWNESDALE. [SEAL.]
W. W. CHAPMAN. [SEAL.]

EXHIBIT F.

This indenture, made and entered into this 20th day of March, A. D. 1850, between Stephen Coffin, D. H. Lownesdale, and W. W. Chapman, proprietors of Portland, of the first part, and W. W. Chapman, of Portland, Washington County, Oregon, of the second part, witnesseth that the party of the first part, for and in consideration of the sum of two thousand dollars, the receipt whereof is hereby acknowledged, doth release, confirm, and quitclaim unto the said Chapman the following-described property in the said town of Portland, to wit, lots numbers, (1,) two, (2,) three, (3,) four, (4,) in fractional block number eighty-one, (81,) being the warehouse fraction, and situate east of Water street, to the water north of Oak street and south of Pine street, according to the plat of said town.

In testimony whereof the parties have hereunto set their hands and seals day and year aforesaid.

(Signed) S. COFFIN. [SEAL.]
D. H. LOWNESDALE, [SEAL.]
By his Attorney-in-fact W. W. Chapman.
W. W. CHAPMAN. [SEAL.]

Presented and filed Nov. 2, 1871.

RALPH WILCOX, *Clerk*,
By ED. WILCOX, *Dep.*

In the circuit court of the United States for the district of Oregon.

Presented and filed August 1, 1872.

RALPH WILCOX, *Examiner.*

L. M. STARR, PLAINTIFF, *v.* BENJAMIN STARK, DEFENDANT. } No. 62.

C. P. BACON ET ALS., PLAINTIFFS, *v.* BENJAMIN STARK, DEFENDANT. } No. 120.

L. M. STARR, PLAINTIFF, *v.* BENJAMIN STARK, DEFENDANT. } No. 119.

To save the expense of proving the execution of the original exhibits hereinafter mentioned and hereto attached, it is hereby stipulated and agreed, by and between the plaintiffs in each of the above-entitled suits, by W. W. Chapman and Mitchell & Dolph, their attorneys, and the defendant in each of the above-entitled suits, by William Strong and Bronaugh & Catlin, his attorneys:

1st. That Exhibit number 1, attached to a copy of the deposition of William Geiger, jr., in the suit of Henry Failing, plaintiff, v. Benjamin Stark, defendant, in the circuit court of the United States for the district of Oregon, filed in the above-entitled suits as evidence by stipulation of parties, purporting to be a copy of an agreement between D. H. Lownsdale and Benjamin Stark, made at San Francisco, California, March 1st, 1850, and the indorsement thereon, marked "Exhibit number 2," purporting to be a modification and ratification of said agreement by Stephen Coffin and W. W. Chapman, and the indorsement thereon, marked "Exhibit number 3," purporting to be an assent to such modification by John H. Couch as the attorney-in-fact of Benjamin Stark, are true copies of original papers, which were signed by the several parties by whom they purport to be executed, and may be used in evidence in each and all of the above-entitled suits, subject only to like objections, and in the same manner that the originals of said copies might be read in evidence, if produced and the execution thereof duly proved; but this stipulation is not in any manner to be construed into an admission of any authority of the said John H. Couch to assent to a modification of said agreement as the agent or attorney of Benjamin Stark.

11

2nd. That "Exhibit number 4," hereto attached, is a true copy of an original agreement entered into between D. H. Lownsdale, Stephen Coffin, and W. W. Chapman, on the 10th day of March, 1852, and it may be read in evidence in each of the above-entitled suits as proof of the original, and subject only to such objections as might be made to the introduction of the original, if produced, and the execution of the same duly proved.

3rd. The execution of the following original papers, hereto attached, is admitted, and the same, without further proof, and subject only to such objections as might be made to each of said originals if the execution of the same were duly proved by the subscribing witnesses, or other competent testimony, may be read in evidence in each or any of the above-entitled suits, as they shall prove material, to wit:

Exhibit No. 5, purporting to be a deed from W. H. Bennett, sheriff, to William H. Barnhart, for lot number one (1), in block number eighty-

one (81), in the city of Portland, county of Multnomah, and State of Oregon, dated July 24th, A. D. 1852.

Exhibit No. 6, purporting to be a deed from C. A. Eastman, and Maria C. Eastman, his wife, to Charles Hutchins and Henry Hale, for lot number one (1), in block number eighty-one (81), in the city of Portland, Multnomah County, and State of Oregon, dated June 22d, A. D. 1857.

Exhibit No. 7, purporting to be a deed from Charles Hutchins to A. M. Starr and A. P. Ankeny, for the south half of lot number one (1), in block number eighty-one (81), in the city of Portland, county of Multnomah, and State of Oregon, dated July 19th, A. D. 1859.

Exhibit No. 8, purporting to be a deed from A. P. Ankeny and Charity Ankeny, his wife, to Lewis M. Starr, for the south half of lot number one (1), in block number eighty-one (81), in the city of Portland, county of Multnomah, and State of Oregon, dated July 25th, A. D. 1860.

Exhibit No. 9, purporting to be a deed from Henry Hale to Charles Hutchins, for the south half of lot number one (1), in block number eighty-one (81), in the city of Portland, county of Multnomah, and State of Oregon, dated May 20th, A. D. 1858.

Exhibit No. 10, purporting to be a deed from W. W. Chapman to Lewis M. Starr, for the south half, being twenty-five (25) feet off of lot number two (2), in fractional block number eighty-one (81), running from Front street to low-water mark, in the city of Portland, county of Multnomah, and State of Oregon, dated October 3rd, A. D. 1850.

Exhibit No. 11, purporting to be a deed from W. W. Chapman to J. B. V. Butler, for the north half (twenty-five (25) feet) off of lot number two (2), in fractional block number eighty-one (81), in the city of Portland, county of Multnomah, and State of Oregon, (said lot running from Front street to low-water mark,) dated October 8th, A. D. 1850.

Exhibit No. 12, purporting to be a deed from Simon B. Mayre to John W. W. McCay, for the north half of lot number two (2), in fractional block number eighty-one (81), being twenty-five (25) feet frontage on Front street; the same being a water-lot, in the city of Portland, county of Multnomah, and State of Oregon, dated Sept. 16, A. D. 1851.

Exhibit No. 13, purporting to be a deed from J. B. V. Butler to John W. W. McCay, for the north half, twenty-five (25) feet off of lot number two (2), in fractional block number eighty-one (81), in the city of Portland, county of Multnomah, and State of Oregon, dated Oct. 9th, A. D. 1850.

Exhibit No. 14, purporting to be a deed from John W. W. McCay to Addison M. Starr, for the north half of lot number two, (2,) in fractional block number eighty-one, (81,) being twenty-five (25) feet frontage on Front street; the same being a water-lot, in the city of Portland, county of Multnomah, and State of Oregon, dated Sept. 22d, A. D. 1851.

Exhibit No. 15, purporting to be a deed from Charles Hutchins and Henry Hale to Lewis M. Starr, for the north half of lot number one, (1,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated May 19th, A. D. 1858.

Exhibit No. 16, purporting to be a deed from Lewis M. Starr to A. M. Starr, for an undivided one-half of the south half of lot number two, (2,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated January 4th, A. D. 1864.

Exhibit No. 17, purporting to be a deed from A. M. Starr and Harriet C. Starr, his wife, to Lewis M. Starr, for an undivided one-half of the north half of lot number two, (2,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated January 4th, A. D. 1864.

Exhibit No. 18, purporting to be a deed from William W. Chapman to Jackson Powell, for lots number three (3) and four (4) in fractional block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated Nov. 11th, A. D. 1850.

Exhibit No. 19, purporting to be a deed from Jackson Powell to Addison M. Starr, for lot number four, (4,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated Aug. 12, A. D. 1856.

Exhibit No. 20, purporting to be a deed from Jackson Powell to Joseph Cleaver, for lot number three, (3,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated July 5th, A. D. 1854.

Exhibit No. 21, purporting to be a deed from Jacob W. Peters
14 and Sarah E. J. Peters, his wife, to Malissa Cleaver, wife of Joseph W. Cleaver, for lot number three, (3,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated December 22d, A. D. 1859.

Exhibit No. 22, purporting to be a deed from Joseph W. Cleaver and Malissa Cleaver, his wife, to A. M. & L. M. Starr, for lot number three, (3,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, dated June 14th, A. D. 1864.

That as to exhibit number 18, the same was not witnessed until the 10th day of February, 1862, at the same time when acknowledged.

MITCHEL & DOLPH,
Solicitors for all said Plaintiffs.
W. W. CHAPMAN,
Sol. for Comp.
WM. STRONG &
BRONAUGH & CATLIN,
Sol. for Def.

AUGUST 1*st*, 1872.

EXHIBIT FOUR.

Know all men by these presents, that, whereas Daniel H. Lownsdale, Stephen Coffin, and William W. Chapman have heretofore, and up to the date of these presents, been joint proprietary claimants of the tract of land lying, situate, and being in the county of Washington, in Oregon Territory, being the same tract which the said Lownsdale originally purchased of Francis W. Pettygrove, and upon which a part of the city of Portland is laid out; and whereas the said Lownsdale, Coffin, and Chapman have sold lots in said city of Portland, to each other, and to third persons, obliging themselves to make to the grantee or grantees a deed of general warranty whenever the grantor shall obtain a patent from the Government of the United States for the same; and whereas it has become necessary, in order to a compliance with the law of Congress of September 27th, 1850, creating the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands, that the said parties shall designate, before the surveyor-general of Oregon, the precise and particular portion or part of said Portland tract, which each, by
15 agreement with the other, respectively claims, in order that he may obtain a patent therefor from the Government of the United; and whereas the said Lownsdale, Coffin, and Chapman will, simultaneously with the signing and sealing of these presents, and with the delivery thereof to J. Quinn Thornton as an escrow, (to be by him held

as such until a division of said claim before the said surveyor-general,) go before the said surveyor-general for the purpose of making said division by a particular designation of the metes and bounds which each claim of the said Portland tract, by agreement with the other two:

Now, this agreement, made this 10th day of March, A. D. one thousand eight hundred and fifty-two, by and between the said Daniel H. Lownsdale, Stephen Coffin, and William W. Chapman, of the said city of Portland, in the said county of Washington, witnesseth that, each for himself, his heirs, executors, and administrators, in consideration of the foregoing, and also of one dollar each to the other in hand paid, by the other, before the signing and sealing hereof, covenants to and with each of the others, their heirs, executors, and administrators, as follows:

1st. That he will fulfill and perform all contracts and agreements which he has heretofore entered into with the others, or with either of them, or with other persons, respecting the said tract of land, or any part thereof.

2d. That he will never abandon or remove from the said claim, which he, simultaneously with the signing and sealing hereof, shall make, before the said surveyor-general, to a portion of the said Portland tract, until he shall obtain a patent therefor from the Government of the United States; that is to say,

3d. That he will use all due diligence to procure a patent of the same, and that, to this end, he will, in all respects, fulfill and perform the requisites of the law upon this subject; and,

4th. That, when a patent shall be so obtained, he will make a good and sufficient deed of general warranty for all lots, or parts of lots, in the part or tract so patented to him, which may heretofore have been sold, or agreed, by the said parties jointly, or any of them separately, to be sold; the said deed, of course, in all cases, to be made to the
16 original grantor, his heirs, executors, administrators, or assigns, or grantees, as the case may be.

It is understood and agreed, however, between the parties aforesaid, that this agreement is not to be so construed, or so executed, as to in any way affect or include such portion, or portions, of said Portland claim as may, by the said surveyor-general, be designated as belonging to the wife of the said William W. Chapman and the wife of Daniel H. Lownsdale.

And the said Daniel H. Lownsdale covenants, to and with the said Stephen Coffin, his heirs, executors, and administrators, that he will exchange with the said Coffin such lots as the said Lownsdale now holds, and may designate and name, situate in that part which may be designated as belonging to the said Coffin, for an equal number which the said Coffin now holds in that part which may be designated as belonging to the wife of the said Daniel H. Lownsdale, the lots exchanged to be equal in size. In making exchange of lots, in the parts which shall be designated by the surveyor-general, for the wife of the said Lownsdale, and the wife of the said Chapman, the said Lownsdale will exchange with the said Chapman lot for lot, as far as the said Lownsdale's lots may go, and, to fill the number, will designate lots in said Coffin's part. The said Coffin will release to said Chapman, in the part falling to said Chapman's wife, lot for lot, to the full amount of lots said Coffin may have in said Chapman's wife's part, accepting from said Chapman such lots as said Chapman may receive from said Lownsdale in the tract of said Coffin, as aforesaid. In this exchange the lots to be of equal size.

*[It is understood and agreed, however, between the parties aforesaid, that this agreement is not to be construed, or so executed, as in any way to affect or include such portion or portions of said Portland claim as may, by the said surveyor-general, be designated as belonging to the respective wives of the said parties.]

And, for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these
17 presents bind themselves, each unto the other, in the penal sum of three hundred thousand dollars, as fixed and settled damages, to be paid, by the party failing, to the party or parties injured, their heirs, executors, or administrators, or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

D. H. LOWNSDALE. [SEAL.]
S. COFFIN. [SEAL.]
W. W. CHAPMAN. [SEAL.]

Signed, sealed, and delivered to—(eight lines, commencing at the 13th from the top of the 5th page, erased before signing)—

J. QUINN THORNTON.
D. B. HANNA.

EXHIBIT FIVE.

Whereas, by virtue of an execution issued from the clerk's office of the district court of Washington County, Oregon Territory, bearing date the 23rd day of June, A. D. 1852, directed to the sheriff of said county, wherein Zacharia C. Norton is plaintiff, and Gabriel Winter and Benjamin G. Latimer are defendants, the said sheriff was commanded of the lands and tenements, goods and chattels, of the said defendants, to cause to be made the sum of four thousand four hundred and eighty-six dollars and eighty-six cents, and eighty-eight dollars and eighty cents, cost of suit; and whereas I, William H. Bennett, sheriff of said county, by virtue of said execution, having duly levied upon and advertised for sale to the highest bidder, for cash in hand, the following property, to wit: The right, title, and interest of the said Winter & Latimer to lot number (1) one, in block number (81) eighty-one, and improvements thereon, situated in the city of Portland, Washington County, Oregon, did, on this 24th day of July, A. D. 1852, sell the same to William H. Barnhart for the sum of two hundred and sixty dollars, he being the highest bidder: To have and to hold the said property, sold as aforesaid, to the said William H. Barnhart, his heirs and assigns, forever.

In testimony whereof, I, William H. Bennett, sheriff of Washington County, Oregon, have hereunto set my hand and seal this 24th day of July, A. D. 1852.

[SEAL.] W. H. BENNETT,
Sheriff W. C.

18 TERRITORY OF OREGON,
Washington County, ss:

On this 24th day of July, A. D. 1852, William H. Bennett, sheriff of said county, personally appeared before me, A. L. Davis, a justice of the peace in and for said county, and acknowledged the within deed, by him subscribed, to be his free and voluntary act, for the purpose therein mentioned.

Given under my hand the day and year aforesaid.

ANTHONY L. DAVIS,
Justice of the Peace.

*Eight lines in brackets erased.

TERRITORY OF OREGON,
Washington County, ss:

I hereby certify that the within and foregoing instruments of writing were received for record July twenty-sixth, and were recorded on the one hundred and seventh page of book B, of the records of deeds in the office of the recorder of Washington County, this second day of August, A. D. eighteen hundred and fifty-two.

In witness whereof I have hereunto set my hand and private seal, (there being no seal of office provided,) at office, the day and year last above written.

[SEAL.] W. S. CALDWELL,
Clerk and Recorder.

TERRITORY OF OREGON,
County of Multnomah, ss:

I hereby certify that the within instruments of writing were received for record February 27th, A. D. 1855, and are recorded on the twenty-second and twenty-third pages of book A, of the records of deeds, in the office of the recorder of Multnomah County, this second day of March, A. D. 1855.

In testimony whereof I have hereunto set my hand and private seal, (there being no seal of office provided,) at Portland, the day and year last above written.

[SEAL.] SHUBRICK NORRIS,
Auditor and Recorder.

Filed for record 27th February, 1855.

EXHIBIT SIX.

This indenture, made and entered into this twenty-second day of June, A. D. eighteen hundred and fifty-seven, between Cyrus A. Eastman and Maria C. Eastman, his wife, of the city of San Francisco, California, of the first part, and Charles Hutchins, of Portland, Oregon Territory, and Henry Hale, of San Francisco, California, of the second part, witnesseth: That the parties of the first part for and in consideration of the sum of five hundred dollars, to them in hand paid, (the receipt whereof is hereby acknowledged,) have and do, by these presents, grant, bargain, sell, and convey unto the part of the second part, all their right, title, interest, and claim in and to the following property, to wit: lot number one, (1,) in block number eighty-one, (81,) in the city of Portland, Oregon, according to the plat of said city, said lot being situate immediately opposite lot number one, (1,) in block number twenty-six, (26,) and between said lot and the Willamette River, together with all and singular the appurtenances and improvements thereunto belonging: To have and to hold to the parties of the second part, and their heirs, representatives, and assigns forever; and the parties of the first part doth covenant to and with the parties of the second part, their heirs, representatives, and assigns, that they will forever warrant and defend the said premises from any and all persons claiming under, by, or through them.

In testimony whereof, we have hereunto set our hands and seals the day and year above written.

C. A. EASTMAN. [L. S.]
MARIA C. EASTMAN. [L. S.]

Signed, sealed, and delivered in presence of—
M. KEITH.
A. L. DAVIS.

MULTNOMAH COUNTY,
Oregon Territory, ss :

On this thirteenth day of June, A. D. 1857, personally appeared before me, the undersigned, one of the justices of the peace in and for said county, the within-named Cyrus A. Eastman and Maria C. Eastman, his wife, who are personally known to me to be the identical persons by whom and in whose names the foregoing deed is signed,
20 and acknowledged that they signed and executed the same voluntarily for the purpose therein named; and the said Maria E. Eastman, wife of said Cyrus A. Eastman, being by me first made acquainted with the contents of said deed, separate and apart from her said husband, acknowledged that she signed and executed the same freely, and that she relinquished all right of dower in said premises voluntarily without any compulsion or undue influence from her said husband, or any other person.

ANTHONY L. DAVIS.
Justice of the Peace.

TERRITORY OF OREGON,
Multnomah County, ss :

I hereby certify that the within instruments of writing were received for record Sept. 1st, 1857, and were recorded on the 448th and '49th pages of book A, of the records of deeds, in the office of the recorder of Multnomah County, this 9th day of September, 1857.

In witness whereof, I have hereunto set my hand and affixed the seal of said county at Portland, the day and year last above written.

D. W. LICHTENTHALER,
Recorder.

EXHIBIT SEVEN.

Know all men by these presents, that I, Charles Hutchins, of the city of Portland, Oregon, for and in consideration of one thousand dollars, to me in hand paid by A. M. Starr and A. P. Ankeny, of the same place, the receipt whereof is hereby acknowledged, have bargained, sold, and conveyed to the said A. M. Starr and A. P. Ankeny, the south half of lot number one (1), in block number eighty-one (81), with the frame building now occupied by me as a store on said lot, all in the city of Porland, Multnomah County, State of Oregon: to have and to hold the same to themselves, their heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal this 19th day of July, A. D. 1859.

CHAS. HUTCHINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. H. WILLIAMS.
A. C. GIBBS.

21 STATE OF OREGON,
Multnomah County, ss :

Be it remembered that on this 19th day of July, A. D. 1859, personally came before me, the undersigned notary public in and for said county, Charles Hutchins, to me personally known to be the person mentioned in and who executed the foregoing conveyance, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] ADDISON C. GIBBS,
Notary Public, Oregon.

STATE OF OREGON,
Multnomah County, ss:

I hereby certify that the above instruments of writing were received for record August 10th, 1859, and are recorded on page 400 of book "B" of the record of deeds in the office of the recorder of Multnomah County.

In testimony whereof, witness my hand and the seal of said county hereto affixed at Portland this 25th day of August, 1859.

D. W. LICHTENTHALER,
County Clerk.

EXHIBIT NO. EIGHT.

This indenture, made the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty, between A. P. Ankeny and Charity Ankeny, his wife, of the city of Portland, Multnomah County, State of Oregon, of the first part, and Lewis M. Starr, of the same place, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of five hundred dollars to them in hand by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all of our right, title, and interest in and to the following-described property, to wit: The south half of lot number one, (1,) in block number eighty-one, (81,) as described on the map or plat of the city of Portland, in the county
22 and State aforesaid; also one frame building situate on the north half of lot number one, (1,) in block number eighty-one, (81,) being the undivided one-half interest in the above-described property, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, to have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALEX. P. ANKENY. [SEAL.]
CHARITY ANKENY. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. L. MCEWAN,
T. BARTELS.

STATE OF OREGON,
Multnomah County, ss:

Be it remembered that on the twenty-fifth day of July, A. D. one thousand eight hundred and sixty, before me, Wm. L. McEwan, a notary public in and for the said county, personally appeared A. P. Ankeny and Charity Ankeny, his wife, personally known to me to be the individuals

described in and who executed the within conveyance, and in due form of law acknowledged that they signed, sealed, and delivered the same for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my seal the day and year above written.

And the said Charity, wife of the said A. P. Ankeny, on private examination made, acknowledged that she signed, sealed, and delivered the same freely and voluntarily.

Witness my hand and seal notarial.

[SEAL.] WILLIAM L. McEWAN,
Notary Public.

23 STATE OF OREGON,
County of Multnomah, ss:

I hereby certify that the within instruments of writing were received for record July 26th, 1860, and are recorded on the 754 and 755 pages of book "B" of the records of deeds in my office.

Witness my hand and official seal, affixed this 29th day of July, A. D. 1860.

[SEAL.] SHUBRICK NORRIS,
County Clerk.

EXHIBIT NINE.

This indenture, made the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, between Henry Hale, of the city of San Francisco, California, of the first part, and Charles Hutchins, of the city of Portland, Oregon, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one thousand dollars to him in hand by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all the south half of lot number one, (No. 1,) in block number eighty-one, (81,) in the city of Portland, county of Multnomah, Oregon Territory, together with the frame building now situated on the north half of said lot, the same building being the one occupied by Chas. Hutchins & Co., for a store; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, to have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of thesecond part, his heirs and assigns, forever.

24 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY HALE.

Signed, sealed, and delivered in presence of us—
RO. J. LADD.
ANTHONY L. DAVIS.

TERRITORY OF OREGON,
Multnomah County, ss:

Be it remembered that, on this twentieth day of May, A. D. one thousand eight hundred and fifty-eight, before me, Anthony L. Davis, a jus-

tice of the peace in and for the said county, personally appeared Henry Hale, known to me to be the individual described in and who executed the within conveyance, and in due form of law acknowledged that he signed, sealed, and delivered the same for the uses and purposed therein mentioned.

In witness whereof I have hereunto set my hand the day and year above written.

ANTHONY L. DAVIS,
Justice of the Peace.

TERRITORY OF OREGON,
Multnomah County, ss:

I hereby certify that the within instruments of writing were received for record May 21st, 1858, and are recorded on page six hundred and seventy-nine of book "A," of the records of deeds in the office of the recorder of Multnomah County.

In testimony whereof witness my hand and the seal of said county hereto affixed, at Portland, this 24th day of May, A. D. 1858.

[SEAL.] D. W. LITCHTENTHALER,
Auditor and Recorder.

EXHIBIT TEN.

This indenture, made and entered into this 3d day of October, A. D. 1850, between William W. Chapman, of Portland, Washington County, Oregon, of the first part, and *and* Lewis M. Starr, of the second part, witnesseth that the party of the first part, for and in consideration of the sum of five hundred dollars, to him in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said party of the second part, the following-described town property, to wit, the south half, being twenty-five feet off the lot No. (two) 2, in fractional block No. (eighty-one) 81, running from the Front street to low-water mark. The said Chapman will warrant and defend the said property against all claims, the United States excepted; and further, that if he shall obtain title to the said property from the United States, he will convey the same to the said party of the second part by deed of general warranty.

In testimony whereof the said William W. Chapman hath hereunto set his hand and seal the day and year aforesaid.

W. W. CHAPMAN. [SEAL.]

Witnesses:
THOS. G. ROBINSON.
DAVID LOGAN.

STATE OF OREGON,
County of Multnomah, ss:

On this 10th day of February, 1862, before me, the undersigned, personally came W. W. Chapman, to me known to be the identical person described in and who executed the within conveyance, and acknowledged to me that he executed the same freely for the purposes therein mentioned.

Witness my hand and notarial seal the day above written.

[SEAL.] E. D. SHATTUCK,
Notary Public, Oregon.

I hereby certify that the within deed is recorded in records of bonds and deeds No. one, pages 287 and 288, in my office, this 23d day of January, A. D. 1852.

WILLIAM GEIGER, JR.,
Clerk and Recorder, Washington County, O. T.

EXHIBIT ELEVEN.

This indenture, made and entered into this 8th day of October, A. D. 1850, between William W. Chapman, of Portland, of the first part, and J. B. V. Butler, of the same place, of the second part, witnesseth that the said Chapman, for and in consideration of the sum of five hundred dollars to me in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said J. B. V. Butler the following-described property, to wit, the north half (twenty-five
26 feet) off of lot No. 2, in fractional block No. 81, in *in* the town of Portland; said lot running from Front street to low-water mark.

And the said Chapman covenants that if he shall obtain a title to said lot from the United States he will convey the same to the said Butler by deed of general warranty.

In testimony whereof the said Chapman hath hereunto set his hand and seal the day & year aforesaid.

W. W. CHAPMAN. [SEAL.]

EXHIBIT TWELVE.

This indenture, made and entered into this sixteenth day of September, eighteen hundred and fifty-one, between Simon B. Marye, of the town of Portland, Territory of Oregon, of the first part, and John W. W. McCay, of the same place and Territory, of the second part, witnesseth that the said Marye, for and in consideration of the sum of four hundred dollars to him in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto John W. W. McCay the following-described property, to wit, the north half of lot number two, in fractional block number eighty-one, being twenty-five feet frontage on Front street, the same being a water-lot, and lying and being in the town of Portland, and designated as per map of said town, and extending from Front street to low-water mark; and the said Marye covenants to convey the said described lot, by deed of general warranty when he obtains the same from Joseph B. V. Butler, from whom the said lot was purchased, the said lot by a quit-claim deed, dated the ninth day of October, A. D. 1851, in favor of John W. W. McCay, the present purchaser, or owner, of the within deed.

In testimony whereof the said Marye hereunto sets his hand and affixed his seal the day and year above written.

SIMON B. MARYE. [SEAL.]

In presence of—

EXHIBIT THIRTEEN.

This indenture, made and entered into this 9th day of October, A. D. 1850, between J. B. V. Butler, of Portland, of the first part, and John W. W. McCay, of the same place, of the second part, witnesseth that the said Butler, for and in consideration of the sum of five hun-
27 dred dollars to me in hand paid, the receipt to hereof is hereby acknowledged, doth release, confer, and quit-claim unto the said John W. W. McCay the following-described property, to wit, the north half (twenty-five feet off) of lot No. 2, in fractional block No. 81, in the town of Portland; said lot running from Front street to low-water mark.

And the said Butler covenants that if he shall ob*at*in a title to said lot from the United States, he will convey the same to the said McCay, by deed of general warranty.

In testimony whereof the said Butler hath hereunto set his hand and seal, the day and year *of* aforesaid.

JOSEPH B. V. BUTLER. [SEAL.]

In presence of—
WM. M. KING.

Personally appeared before me Joseph B. V. Butler, to me personally known to be the person whose name is affixed to the within deed, and acknowledged the same to be his act and deed for the purposes therein named.

Given under my hand and seal this 4 day of April, A. D. 1851.

[SEAL.] WM. M. KING,
Notary Public.

I hereby certify that the within deed is recorded in records of deeds and bonds, book one, at page 96, on this 7th day of April, A. D. 1851.

WILLIAM GEIGER, JR., *Recorder*,
By R. WILCOX, *Deputy.*

EXHIBIT FOURTEEN.

This indenture, made and entered into this twenty-second day of September, A. D. eighteen hundred and fifty-one, between John W. W. McCay, of the town of Portland, Territory of Oregon, of the first part, and Addison M. Starr, of the same place and Territory, of the second part, witnesseth: That the said McCay, for and in consideration of the sum of four hundred and ten dollars, to him in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim, unto Addison M. Starr the following-described property, to wit: The north
28 half of lot number two, in fractional block number eighty-one, being twenty-five feet frontage on Front street, the same being a water-lot, and lying and being in the town of Portland, and extending from Front street to low-water mark; and the said McCay covenants to convey the said described lot, by deed of general warranty, when he obtains the same from Joseph B. F. Butler, from whom he purchased the said lot by a quit-claim deed 'ated the ninth day of October, A. D. 1851.

In testimony whereof the said McCay hereunto sets his hand and affixed his seal, the day and year above written.

JNO. W. W. McCAY. [SEAL.]

In presence of—
JAMES WARREN DAVIS.

I hereby certify that the within deed is recorded in records of bonds and deeds No. one, pages 288 and 289, in my office, this 23d day of January, A. D. 1852.

WILLIAM GEIGER, JR.,
Clerk and Recorder, Washington County, O. T.

EXHIBIT FIFTEEN.

This indenture, made the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, between Charles Hutchins and Henry Hale, of the first part, and Addison M. Starr and Lewis M. Starr, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thou-

sand dollars to them in hand by the said parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said parties of the second part, and to their heirs and assigns forever, all the north half of lot number one, (No. 1,) in block number eighty-one, (No. 81,) in the city of Portland, county of Multnomah, and Teroitory of Oregon, together with all and singular the tenements, except the building now standing thereon, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity,
29 of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, to have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHAS. HUTCHINS.
HENRY HALE.

(The words "except the building now standing thereon" interlined before signing.)

Signed, sealed, and delivered in presence of us:
RO. J. LADD.
ANTHONY L. DAVIS.

TERRITORY OF OREGON,
Multnomah County, ss:

Be it remembered that on this nineteenth day of May, A. D. one thousand eight hundred and fifty-eight, before me, Anthony L. Davis, a justice of the peace in and for the said county, personally appeared Charles Hutchins and Henry Hale, known to me to be the individuals described in, and who executed, the within conveyance, and in due form of law acknowledged that they signed, sealed, and delivered the same, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand the day and year above written.

ANTHONY L. DAVIS,
Justice of the Peace.

TERRITORY OF OREGON,
Multnomah County, ss:

I hereby certify that the within instruments of writing were received for record June 3rd, A. D. 1858, and are recorded on page seven hundred and twelve of book A of the record of deeds, in the office of the recorder of Multnomah County.

In testimony whereof witness my hand and the seal of said county hereto affixed, at Portland, this 17 day of June, A. D. 1858.

[SEAL.] D. W. LICHTENTHALER,
Auditor and Recorder.

30 EXHIBIT NO. SIXTEEN.

Know all men by these presents that I, Lewis M. Starr, of Portland, Multnomah County, Oregon, for and in consideration of the sum of one

dollar to me in hand paid by A. M. Starr, have this day granted, bargained, and sold, and by these presents do grant, bargain, and sell, release, and confirm unto the said A. M. Starr, an undivided one-half of the south half of lot No. two,'(2,) in block No. eighty-one, (81,) as known and designated upon the map of the city of Portland aforesaid.

In testimony whereof I hereunto set my hand and seal the 4th day of January, A. D. 1864.

LEWIS M. STARR. [SEAL.]

Witnesses. Attest:
WM. MCMILLEN.
BENJN. L. NORDEN.

STATE OF OREGON,
Multnomah County, ss:

Be it remembered that on this 4th day of January, A. D. 1864, Lewis M. Starr, known to me to be the person whose signature appears to 'he foregoing deed, appeared before me and acknowledged the said conveyance to be his act and deed.

Given under my hand this 4th of January, A. D. 1864.

[SEAL.] BENJN. L. NORDEN,
Notary Public for Oregon.

STATE OF OREGON,
Multnomah Co., ss:

I certify the within deed was filed for record Feby. 20, 1864, and recorded in book E, record of deeds, on page 92.

[SEAL.] J. M. BRECK, *Co. Clerk*,
By W. S. CALDWELL, *Deputy.*

EXHIBIT SEVENTEEN.

Know all men by these presents that I, A. M. Starr, and Harriet C., his wife, of the city of Portland, Multnomah County, Oregon, for and in consideration of the sum of one dollar by Lewis M. Starr in hand paid, the receipt whereof is hereby acknowledged, do grant, bargain, and sell, release and confirm, and by these presents do grant, bargain, sell, release, confirm, and quit-claim, unto the said Lewis M. Starr, and to his heirs and assigns, an undivided one-half of the north half of
31 lot No. two, (2,) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, aforesaid.

In testimony whereof the *the* said A. M. Starr, and Harriet C., his wife, have hereunto set their hands and seals this 4th day of January, 1864.

A. M. STARR. [SEAL.]
H. C. STARR. [SEAL.]

Witnesses:
WM. MCMILLEN,
A. J. BUTLER.

STATE OF OREGON,
Multnomah County, ss:

Be it remembered, that on this 4th day of January, A. D. 1864, A. M. Starr and Harriet, his wife, personally came before me, the undersigned, and, being known to me to be the persons whose signatures appear to the foregoing deed, they acknowledge the same to be their free and voluntary conveyance; the said Harriet, wife of said A. M., being

examined by me apart from her said husband, declared she had executed the said deed without fear or compulsion from any one.

Witness my hand and notarial seal affixed the day and year aforesaid.

[SEAL.] BENJN. L. NORDEN,
Notary Public for Oregon.

[5 cts rev. stamp, cancelled.]

STATE OF OREGON,
Multnomah Co., ss:

I certify the within deed was filed for record Feb'y 20, 1864, and recorded in book E, record of deeds, on page 91.

J. M. BRECK, *Co. Clerk.*
By W. S. CALDWELL,
Deputy.

EXHIBIT EIGHTEEN.

This indenture, made and entered into this 11th day of November, A. D. 1850, between William W. Chapman, of Portland, Oregon Territory, of the first part, and Jackson Powell, of the same place, of the other part, witnesseth: That the said Chapman, for and in consideration of the sum of two thousand dollars, to him in hand, doth release, confirm, and quit-claim unto the said Powell all his right, title, interest, and claim to the following described property, in the town of
32 Portland, to wit, lots Nos. 3 (three) and 4 (four,) in fractional block No. 81 (eighty-one,) in said town, including warehouse.

And the said Chapman covenants, to and with the said Powell, that if he shall obtain from the United States a title, he will convey the same to the said Powell by deed of general warranty.

In testimony whereof the said Chapman hath hereunto set his hand and seal the day and year aforesaid.

W. W. CHAPMAN. [SEAL.]

Witness:
E. D. SHATTUCK,
M. O. C. MURPHY.

STATE OF OREGON,
County of Multnomah, ss:

On this 10th day of February, 1862, before me, the undersigned, personally came W. W. Chapman, to me known to be the person described in and who executed the within conveyance, and acknowledged to me and declared that he did, at the date of said instrument, freely execute the same, and that the same was his act and deed.

Witness my hand and notarial seal the day above written.

[SEAL.] E. D. SHATTUCK,
Notary Public, Oregon.

EXHIBIT NINETEEN.

Know all men by these presents, that I, Jackson Powell, of Multnomah County, Oregon Ter'itory, for and in consideration of the sum of one thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and quit-claim unto Addison M. Starr and Lewis M. Starr, their heirs, administrators, or assigns, the following

described property, situate and being in the city of Portland, Oregon Ter'itory, and described on the plat of said city as lot number four, (4,) block number eighty-one (81;) to have and hold the above described property to the said Addison M. Starr and Lewis M. Starr, or their assigns, forever.

And I, the said Jackson Powell, for myself, my heirs, executors,
33 or administrators, do hereby covenant to and agree with the said Addison M. and Lewis M. Starr, their heirs and assigns, that the above described property is free from all incumbrances, made or suffered to be made by me, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same against the claims of all persons claiming by, through, or under me, but against none others.

In witness whereof I have hereunto set my hand and seal, in the city of Portland, Oregon Ter'itory, this the twelfth day of August, one thousand eight hundred and fifty-six.

JACKSON POWELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
MATHEW WILLIAMS.
JUDSON H. STARR.

TERRITORY OF OREGON,
Multnomah County, ss:

On this 12th day of August, A. D. 1856, personally appeared before me, Anthony L. Davis, recorder of the city of Portland, and ex-o. justice of the peace in and for said city, Jackson Powell, personally known to me to be the individual described in and who executed the foregoing conveyance, and acknowledged that he freely and voluntarily signed, sealed, executed, and delivered said deed for the purposes therein set forth.

Given under my hand the day and year first above written.

ANTHONY L. DAVIS,
Recd. City Portland and ex-o. Justice of the Peace.

TERRITORY OF OREGON,
County of Multnomah, ss:

I hereby certify that the within instruments of writing were received for record August twelfth, A. D. 1856, and were recorded on the two hundred and thirty-first page of book A of the record of deeds in the office of the recorder of Multnomah County, on this eleventh day of September, A. D. 1856.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at Portland, the day and year last above written.

[SEAL.] SHUBRICK NORRIS,
Auditor and Recorder.

34 EXHIBIT TWENTY.

This indenture, made the fifth day of July, in the year of our Lord one thousand eight hundred and fifty-four, between Jackson Powell, of the county of Clackamas, Oregon Territory, of the first part, and Joseph Cleaver, of the city of Portland, county of Washington, Territory of Oregon, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of sixteen hundred dollars, to him in hand paid by the said party of the second part, the re-

ceipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents does re mise, release, and quit-claim unto the said party of the second part, and to his heirs and assigns forever, all that certain piece, lot, or parcel of land, situate in the city of Portland, county and Territory aforesaid, and known and designated on the map or plan of said city as lot number (3) three, in block number (81) eighty-one, together with all the improvements and erections thereon, and appurtenances thereunto belonging, or in anywise appertaining; and also, all the estate, right, title, interest, claim, or demand whatsoever, of him, the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, and every part and parcel thereof.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JACKSON POWELL. [SEAL.]

TERRITORY OF OREGON,
Washington County, City of Portland, ss:

On this fifth day of July, 1854, before me, personally came Jackson Powell, to me known to be the individual described in and who executed the within conveyance, and acknowledged that he executed the same for the purposes therein named.

A. P. DENNISON,
Recorder of the City of Portland and Justice of the Peace.

TERRITORY OF OREGON,
County of Multnomah, ss:

I hereby certify that the foregoing instruments of writing were
35 received for record July fifth, A. D. 1854, and are recorded on the fifty-first page of Book C of the records of deeds, in the office of the recorder of Washington County.

Witness my hand and the seal of said county, hereto affixed, this 15th day of July, A. D. 1854.

[SEAL.]

W. S. CALDWELL,
Auditor and Recorder.

EXHIBIT TWENTY-ONE.

Know all men by these presents that we, Jacob W. Peters and Sarah E. Peters, his wife, in consideration of love and affection, do give, grant, convey, and confirm unto our beloved daughter, Malissa Cleaver, wife of Joseph W. Cleaver, and to her and his heirs and assigns forever, all our estate, right, title, interest, property, claim, and demand, both at law and in equity, and as well in possession as expectancy, of, in, and to the following-described property, to wit: Lot numbered three, in block numbered eighty-one, in the city of Portland, county of Multnomah and State of Oregon, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, to have and to hold, to her and her heirs aforesaid, forever.

In testimony whereof we have hereto set our hands and seals this 22 day of December, A. D. 1859.

J. W. PETERS. [SEAL.]
SARAH E. J. PETERS. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. L. MCEWAN and
THOS. J. HOLMES.

MULTNOMAH COUNTY, *Oregon, ss:*

Before me, William L. McEwan, a notary public for the county of Multnomah and State of Oregon, personally appeared J. W. Peters and Sarah E. Peters, the grantors in the foregoing deed named, and personally known to me as such, and acknowledged that they did sign, seal, and deliver the foregoing deed for the uses and purposes therein stated; and the said Sarah E. Peters, wife of the said J. W. Peters, on examination made apart from her said husband, acknowledged that she did sign, seal, and deliver the foregoing deed freely and voluntarily.

36 Witness my hand and seal hereto affixed, this 22 day of December, A. D. 1859.

[SEAL.] WM. L. McEWAN,
Notary Public.

STATE OF OREGON, *Multnomah Co., ss:*

I certify the within deed was filed for record Jan. 23d, 1864, and recorded in book "E," record of deeds, on page 19.

[SEAL.] J. M. BRECK, *Co. Clerk,*
By W. S. CALDWELL, *Deputy.*

EXHIBIT TWENTY-TWO.

This deed, made and entered into this fourteenth day of June, A. D. 1864, by and between Joseph W. Cleaver and Sarah Malissa, his wife, both of the city of Portland, Multnomah County, State of Oregon, parties of the first part, and A. M. and L. M. Starr, of the same place, parties of the second part, witnesseth: That in consideration of the sum of five thousand dollars ($5,000) paid to the said parties of the first part by the said parties of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have bargained, sold, transferred, and by these presents do bargain, sell, transfer, and convey unto the said parties of the second part, all their right, title, and interest, both in law and in equity, in and to the following-described property, to wit, lot numbered three, (3,) in block numbered eighty-one, (81,) in the city of Portland, county of Multnomah and State of Oregon, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the same to themselves, their heirs or assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 14th day of June, A. D. 1864.

J. W. CLEAVER. [SEAL.]
SARAH M. CLEAVER. [SEAL.]

Signed, sealed, and delivered in presence of—
JACOB STITZEL.
BENJ. L. NORDEN.

[U. S. rev. stamp, canceled, 5.00.]

37 STATE OF OREGON,
Multonomah County, ss:

Be it remembered that on this 14th day of June, A. D. 1864, before me, the undersigned, a notary public for the State and county aforesaid, came Joseph W. Cleaver and Sarah Malissa, his wife, known to

me to be the persons who executed the foregoing deed, and acknowledged to me that they executed it; and the said Sarah Malissa acknowledged to me, on a private examination by me made, apart from her husband, that she executed the said deed freely, and without fear or compulsion of any one.

In witness whereof I have hereto set my hand and notarial seal this 14th day of June, A. D. 1864.

[SEAL.] BENJN. L. NORDEN,
Notary Public for Oregon.

STATE OF OREGON,
Multnomah Co., ss:

I certify the within deed was filed for record June 14, 1864, and recorded in book E, records of deeds, on page 270.

J. M. BECK, *Co. Clerk,*
By W. S. CALDWELL, *Deputy.*

In U. S. circuit court, district of Oregon.

THURSDAY, *August* 1, 1872.

LEWIS STARR *vs.* BENJAMIN STARK. } In equity.

At this day comes the complainant, by Mr. J. N. Dolph, his counsel, and the defendant, by Mr. William Strong, his counsel, and the said complainant offers the papers annexed hereto, numbered from 23 to 31 inclusive, to be used as evidence on the trial of the above-entitled cause, namely:

Exhibit 23. A certified copy of power of attorney from W. H. Barnhart to Shubrick Norris. Objected to by defendant as not properly certified, immaterial, and incompetent.

Exhibit 24. Copy of deed from W. H. Barnhart and wife to Cyrus A. Eastman. Same objections made by defendant.

Exhibit 25. Copy of deed from W. W. Chapman to Winter & Latimer. Same objections made by defendant.

38 Exhibit 26. Copy of deed from A. M. and L. M. Starr to Sherlock & Bacon. Same objections made by defendant.

Exhibit 27. A. M. Starr and wife to L. M. Starr, copy of deed. Same objections made by defendant.

Exhibit 28. Copy of deed from A. M. Starr and wife to L. M. Starr. Same objections made by defendant.

Exhibit 29. Copy of deed W. H. Bennett, sheriff, to William H. Barnhart. Same objections made by defendant, and as not the best evidence.

Exhibit 30. Copy of declaration and summons in the case of Z. C. Norton against Winter & Latimer. Same objections made by defendant as last.

Exhibit 31. Copy of journal-entries and record of judgment in case of Z. C. Norton against Winter & Latimer. Same objections made by defendant.

And thereupon the defendant offers, for the same purpose, a copy of the judgment-roll in the case of A. M. & L. M. Starr against Benjamin Stark, marked "Exhibit A," and hereto attached, which is objected to by complainant as incompetent, immaterial, not properly certified, and as being an incomplete record.

RALPH WILCOX,
Examiner.

EXHIBIT TWENTY-THREE.

[W. H. Barnhart to Shubrick Norris, power of attorney, mi'cellaneous record, Multnomah County, No. one, (1,) page 17, exhibit (a) referred to Shubrick Norris' deposition.]

Know all men by these presents that William H. Barnhart, of Portland, in the Territory of Oregon, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Shubrick Norris, of Portland, and Territory aforesaid, my true and lawful attorney, for me and in my name, place, and stead, to do and perform any and all acts in and with the said Territory of Oregon, of whatsoever nature or kind, which I might or could lawfully do and perform were I personally present, ratifying and confirming by these presents whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, by virtue of these presents.

39 In testimony whereof I have hereunto set my hand and seal this twenty-eighth day of July, A. D. 1855.

W. H. BARNHART. [SEAL.]

In presence of—
A. P. DENNISON,
CHAS. B. PILLOW.

TERRITORY OF OREGON,
Multnomah County, ss:

On this 28th day of July, A. D. 1855, before me personally came W. H. Barnhart, to me personally known to be the individual described in, and who executed, the foregoing instrument of writing, and acknowledged that he executed the same for the purposes therein named.

Witness my hand and official seal the day and year above mentioned.

[SEAL.] A. P. DENNISON,
Notary Public.

Received for record July 28th, A. D. 1855.

SHUBRICK NORRIS,
Recorder and A.

EXHIBIT TWENTY-FOUR.

Whereas the lot or tract of land situate in the city of Portland, and known as lot number one,](No. 1,) in block number eighty-one, (No. 81,) has been, together with other premises, mortgaged by W. H. Barnhart to Cyrus A. Eastman, as by said mortgage, dated the ninth day of April, A. D. 1855, on reference thereunto, will appear; and whereas the said parties have agreed that the whole interest and equity of redemption of said Barnhart in and to said lot of land shall be conveyed to and received by said Eastman at and for the sum of three hundred dollars, in part satisfaction of the money due on said mortgage, leaving other property named in said mortgage not in any way affected by these presents: Now, know all men by these presents, that I, the said William H. Barnhart, for and in consideration of the said sum of three hundred dollars, so due in part of said mortgage, and hereby discharged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, to said Cyrus A. Eastman,

40 his heirs and assigns, all my right, title, interest, equity of redemption, and claim in and to said lot number one, in block eighty-one, with all improvements and buildings on the same, to have and to hold same, to him and them, forever.

In witness whereof the said W. H. Barnhart, by Shubrick, his attorney in fact, hath hereunto set his hand and seal this second day of August, A. D. 1855.

W. H. BARNHART, [SEAL.]
By SHUBRICK NORRIS,
His Attorney in Fact.

Signed, sealed, and delivered in the presence of—
A. P. DENNISON.
MARK A. CLIUM.

W. A. and Mary L. Barnhart, by Shubrick Norris, attorney in fact, to Cyrus a. Eastman, mort., record *a*, pape 35.

TERRITORY OF OREGON,
Multnomah County, ss:

On this sixth day of August, A. D. 1855, personally appeared before me Shubrick Norris, to me known to be the attorney in fact of W. H. Barnhart, and acknowledged that he executed the foregoing instrument of writing for the purposes therein mentioned.

Witness my hand and official seal the day and year above written.

[SEAL.] A. P. DENNISON,
Notary Public.

Know all men by these presents that I, Mary D. L. Barnhart, wife of William H. Barnhart, named in the foregoing deed, for and in consideration of the sum of one dollar, and of the premises set forth in the said foregoing deed, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, to Cyrus A. Eastman, his heirs and assigns, all my right, title, interest, dower, and right to dower in and to lot number one, in block number eighty-one, in Portland within named, to have and to hold same, to him and them, forever.

In witness whereof, I have hereunto set my hand and seal this sixth day of August, A. D. 1855.

MARY D. L. BARNHART. [SEAL.]

Signed, sealed, and delivered in presence of—
AMANDA W. REED,
A. P. DENNISON.

41 MULTNOMAH COUNTY, *to wit:*

On this 7th day of August, A. D. 1855, before me, A. P. Dennison, notary public, personally appeared Mary D. L. Barnhart, personally known to me to be the wife of W. H. Barnhart, within named, and the grantor above named, and being by me examined separate and apart from her said husband, acknowledged that she did freely and voluntarily sign, seal, execute, and deliver the foregoing, for the purposes therein contained.

Witness my hand and official seal the day and year above written.

A. P. DENNISON,
Notary Public.

Received for record August 7th, A. D. 1855.

SHUBRICK NORRIS,
Auditor and Recorder.

EXHIBIT TWENTY-FIVE.

This indenture, made and entered into this 30th day of January, A. D. 1851, between William W. Chapman, of Portland, Washington County, Oregon, of the one part, and Gabriel Winter and Benjamin G. Latimer, of San Francisco, California, of the other, witnesseth: That the said Chapman, for and in consideration of the sum of six hundred dollars, lawful money, to him in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said Winter and Latimer all that lot or tract of land situate, lying, and being in the town of Portland, Washington County, Oregon, described as follows, to wit: Lot No. one, (1,) in fractional block No. eighty-one, (81,) according to the plan of said town fifty feet wide, extending from Front street to the river; and the said Chapman covenants, to and with the said Winter and Latimer, that if he shall obtain from the United States a fee-simple title, he will convey the same to the said Winter and Latimer in like manner.

In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

W. W. CHAPMAN. [SEAL.]

Chapman to Winter and Latimer, Washington County; deed, page 25, from page 62, book a.

TERRITORY OF OREGON,
Washington County, ss:

Be it remembered, that, on this 31st day of January, A. D. 1851
42 William W. Chapman, whose signature appears to the annexed deed, personally appeared before me, the undersigned, a justice of s'd county, and acknowledged the same to be his act and deed, and desires me to certify the same.

Given under my hand and seal the day and year aforesaid.

J. B. V. BUTLER, *J. P.* [SEAL.]

Recorded this twenty-sixth day of February, A. D. one thousand eight hundred and fifty-one.

WILLIAM GEIGER, JUN.,
Recorder.

STATE OF OREGON,
County of Multnomah, ss;

I, W. H. Harris, clerk of the county court of the county of Multnomah, and State of Oregon, do hereby certify that the foregoing copies of record of power of attorney and of deeds has been by me compared with the original, and that it is a correct copy of the whole of such original record of power of attorney and of deeds, as the same appears of record at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 26th day of July, A D. 1872.

[SEAL.] W. H. HARRIS, *Clerk*,
By R. L. DURHAM, *Deputy*.

[5-ct. rev. stamp, cancelled.]

EXHIBIT TWENTY-SIX.

(Starr, A. S. and L. M., to Sherlock and Bacon, book D, 602.)

Know all men by these presents that we, Addison M. Starr and Lewis M. Starr, for and in consideration of the sum of three thousand dollars

to us paid, the receipt whereof is hereby acknowledged, have and do hereby grant, bargain, sell, and confirm unto Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, forever, all that certain piece or parcel of land situate, lying, and being in the city of Portland, county of Multnomah, State of Oregon, and described on the map of said city as follows, to wit: The south half of lot number four, (4,) in block number eighty-one, (81,) being twenty-five feet on Front street, running back to low-water mark, to have and to hold the above-described property unto the said Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, forever; and we,
43 the said Addison M. Starr and Lewis M. Starr, our heirs, executors, and administrators, do covenant with the said Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, that the above-described property is free from all incumbrances, that we have good right to sell and convey the same, and that we will, and our heirs, executors and administrators shall, warrant and defend the said property unto the said William Sherlock, Samuel Sherlock, and Charles P. Bacon, their heirs and assigns, against all claims whatsoever.

In witness whereof we have hereunto set our hands and seals this 17th day of March, A. D. 1862.

ADDISON M. STARR. [SEAL.]
LEWIS M. STARR. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. D. SHATTUCK,
J. T. ATWOOD.

STATE OF OREGON,
County of Multnomah, ss:

On this 21st day of March, 1862, before me, the undersigned, personally came Addison M. Starr and Lewis M. Starr, to me known to be the identical persons described in and who executed the foregoing conveyance, and acknowledged to *to* me that they severally executed said conveyance freely.

In witness whereof I hereto set my hand and notarial seal the day above written.

[SEAL.]
E. D. SHATTUCK,
Notary Public within and for Oregon.

Received for rec'd August 14, 1863.

EXHIBIT TWENTY-SEVEN.

(Starrs to Starr, E 91.)

Know all men by these presents that I, A. M. Starr and Harriet C., his wife, of the city of Portland, Multnomah County, Oregon, for and in consideration of the sum of one dollar, by Lewis M. Starr in hand paid, the receipt whereof is hereby acknowledged, do grant, bargain, and sell, release and confirm, and by these presents do grant, bargain, sell, release, confirm, and quitclaim, unto the said Lewis M. Starr, and to his heirs and assigns, an undivided one-half of the north half
44 of No. two (2) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, aforesaid.

EXHIBIT TWENTY-FIVE.

This indenture, made and entered into this 30th day of January, A. D. 1851, between William W. Chapman, of Portland, Washington County, Oregon, of the one part, and Gabriel Winter and Benjamin G. Latimer, of San Francisco, California, of the other, witnesseth: That the said Chapman, for and in consideration of the sum of six hundred dollars, lawful money, to him in hand paid, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said Winter and Latimer all that lot or tract of land situate, lying, and being in the town of Portland, Washington County, Oregon, described as follows, to wit: Lot No. one, (1,) in fractional block No. eighty-one, (81,) according to the plan of said town fifty feet wide, extending from Front street to the river; and the said Chapman covenants, to and with the said Winter and Latimer, that if he shall obtain from the United States a fee-simple title, he will convey the same to the said Winter and Latimer in like manner.

In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

W. W. CHAPMAN. [SEAL.]

Chapman to Winter and Latimer, Washington County; deed, page 25, from page 62, book a.

TERRITORY OF OREGON,
Washington County, ss:

Be it remembered, that, on this 31st day of January, A. D. 1851
42 William W. Chapman, whose signature appears to the annexed deed, personally appeared before me, the undersigned, a justice of s'd county, and acknowledged the same to be his act and deed, and desires me to certify the same.

Given under my hand and seal the day and year aforesaid.

J. B. V. BUTLER, *J. P.* [SEAL.]

Recorded this twenty-sixth day of February, A. D. one thousand eight hundred and fifty-one.

WILLIAM GEIGER, JUN.,
Recorder.

STATE OF OREGON,
County of Multnomah, ss;

I, W. H. Harris, clerk of the county court of the county of Multnomah, and State of Oregon, do hereby certify that the foregoing copies of record of power of attorney and of deeds has been by me compared with the original, and that it is a correct copy of the whole of such original record of power of attorney and of deeds, as the same appears of record at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 26th day of July, A D. 1872.

[SEAL.] W. H. HARRIS, *Clerk*,
By R. L. DURHAM, *Deputy.*

[5-ct. rev. stamp, cancelled.]

EXHIBIT TWENTY-SIX.

(Starr, A. S. and L. M., to Sherlock and Bacon, book D, 602.)

Know all men by these presents that we, Addison M. Starr and Lewis M. Starr, for and in consideration of the sum of three thousand dollars

to us paid, the receipt whereof is hereby acknowledged, have and do hereby grant, bargain, sell, and confirm unto Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, forever, all that certain piece or parcel of land situate, lying, and being in the city of Portland, county of Multnomah, State of Oregon, and described on the map of said city as follows, to wit: The south half of lot number four, (4,) in block number eighty-one, (81,) being twenty-five feet on Front street, running back to low-water mark, to have and to hold the above-described property unto the said Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, forever; and we,
43 the said Addison M. Starr and Lewis M. Starr, our heirs, executors, and administrators, do covenant with the said Samuel Sherlock, William Sherlock, and Charles P. Bacon, their heirs and assigns, that the above-described property is free from all incumbrances, that we have good right to sell and convey the same, and that we will, and our heirs, executors and administrators shall, warrant and defend the said property unto the said William Sherlock, Samuel Sherlock, and Charles P. Bacon, their heirs and assigns, against all claims whatsoever.

In witness whereof we have hereunto set our hands and seals this 17th day of March, A. D. 1862.

ADDISON M. STARR. [SEAL.]
LEWIS M. STARR. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. D. SHATTUCK,
J. T. ATWOOD.

STATE OF OREGON,
County of Multnomah, ss:

On this 21st day of March, 1862, before me, the undersigned, personally came Addison M. Starr and Lewis M. Starr, to me known to be the identical persons described in and who executed the foregoing conveyance, and acknowledged to *to* me that they severally executed said conveyance freely.

In witness whereof I hereto set my hand and notarial seal the day above written.

[SEAL.] E. D. SHATTUCK,
Notary Public within and for Oregon.

Received for rec'd August 14, 1863.

EXHIBIT TWENTY-SEVEN.

(Starrs to Starr, E 91.)

Know all men by these presents that I, A. M. Starr and Harriet C., his wife, of the city of Portland, Multnomah County, Oregon, for and in consideration of the sum of one dollar, by Lewis M. Starr in hand paid, the receipt whereof is hereby acknowledged, do grant, bargain, and sell, release and confirm, and by these presents do grant, bargain, sell, release, confirm, and quitclaim, unto the said Lewis M. Starr, and to his heirs and assigns, an undivided one-half of the north half
44 of No. two (2) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, aforesaid.

In testimony whereof the *the* said A. M. Starr and Harriet C., his wife, have hereunto set their hands and seals this 4th day of January, 1864.

A. M. STARR. [SEAL.]
H. C. STARR. [SEAL.]

Witnesses:
WM. MCMILLEN,
A. J. BUTLER.

STATE OF OREGON,
Multnomah County, ss:

Be it remembered that on this 4th day of January, A. D. 1864, A. M. Starr and Harriet, his wife, personally came before me, the undersigned, and being known to me to be the persons whose signatures appear to the foregoing deed, they acknowledged the same to be their free act and voluntary conveyance; the said Harriet, wife of said A. M., being examined by me apart from her said husband, declared she had executed the said deed without fear or compulsion from any one.

Witness my hand and notarial seal, affixed the day and year aforesaid.

[SEAL.] BENJ. L. NORDEN,
Notary Public for Oregon.

[U. S. r. stamp, 5 cts.]

Rec'd for record Feby. 20, 1864.

EXHIBIT TWENTY-EIGHT.

(Starr & wife to Starr, Book F, 419.)

This indenture, made the eighteenth day of September, in the year of our Lord eighteen hundred and sixty-five, between Addison M. Starr and Harriet K. Starr, his wife, of the city of Portland, Multnomah County, State of Oregon, of the first part, and Lewis M. Starr, of the same place, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do hereby remise, release, and forever quitclaim, unto said party of the second part, and to his heirs and assigns
45 forever, all the following-described real estate, to wit, lots numbered one and two in block numbered seventy-nine, as described upon the plat of the said city of Portland; and lots numbered one, two, three, and the north half of lot numbered four, in block numbered eighty-one, as described upon said plat, and also all the parcel of land conveyed to said A. M. Starr and L. M. Starr by John H. Couch and wife and others, dated Aug. 3, 1863, meaning and intending to convey to said L. M. Starr all our interest in said real estate described in said deed, dated Aug. 3, 1863, and recorded on page 626, in book D of records, in said Multnomah County, reference thereto being had for fuller description, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the same unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set our hands and seals, the day and year first above written.

ADDISON M. STARR. [SEAL.]
HARRIET K. STARR. [SEAL.]

Signed, sealed, and delivered in the presence of—
AMORY HOLBROOK,
BENJ. F. GOODWIN.

[U. S. r. stamp, $20.]

STATE OF OREGON,
County of Multnomah, ss:

This certifies that, on this 18th Sept., 1865, before me, personally appeared the within-named Addison M. Starr and Harriet K. Starr, his wife, known to me to be the persons described in and who executed the within instrument, and acknowledged the same to be their free act and deed; and she, on a separate examination, made by me privately and apart from her husband, acknowledged that she executed the same freely and voluntarily, and without fear or compulsion from any one.

Witness my hand and official seal.

[SEAL.] BENJ. F. GOODWIN,
Notary Public, Oregon.

Received for record September 20, 1865.

46 STATE OF OREGON,
County of Multnomah, ss:

I, W. H. Harris, clerk of the county court of the county of Multnomah and State of Oregon, do hereby certify that the foregoing copies of record of deeds has been by me compared with the original, and that it is a correct copy of the whole of such original records of deeds as the same appears of record at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 26th day of July, A. D. 1872.

[SEAL.] W. H. HARRIS, *Clerk*,
By R. L. DURHAM, *Deputy*.

[5-ct. rev. stamp.]

EXHIBIT TWENTY-NINE.

Whereas by virtue of an execution issued from the clerk's office of the district court of Washington County, Oregon Territory, bearing date the 23d day of June, A. D. 1852, directed to the sheriff of said county, Zacharia C. Norton is plaintiff, and Gabriel Winter and Benjamin G. Latimer are defendants, the said sheriff was commanded of the lands and tenements, goods and chattles of the said defendants, to cause to be made the sum of four thousand four hundred and ninety-six dollars and eighty-six cents, and eighty-eight dollars and eighty cents cost of suit; and whereas I, William H. Bennett, sheriff of said county, by virtue of said execution, having duly levied upon and advertised for sale to the highest bidder, for cash in hand, the following property, to wit: The right, title, and interest of the said Winter & Latimer to lot No. (1) one, in block No. (81) eighty-one, and improvements thereon, situated in the city of Portland, Washington County, Oregon, did, on this 24th day of July, A. D. 1852, sell the same to William H. Barnhart for the sum of two hundred and sixty dollars, he being the highest bidder. To have

and to hold the said property, sold as aforesaid, to the said William H. Barnhart, his heirs and assigns, forever.

In testimony whereof I, William H. Bennett, sheriff of Washington County, Oregon, have hereunto set my hand and seal this 24th day of July, A. D. 1852.

W. H. BENNETT, [SEAL.]
Sheriff, W. C.

47 TERRITORY OF OREGON,
Washington County, ss:

On this 24th day of July, A. D. 1852, William H. Bennett, sheriff of said county, personally appeared before me, A. L. Davis, a justice of the peace in and for said county, and acknowledged the within deed, by him subscribed, to be his free and voluntary act, for the purposes therein mentioned.

Given under my hand the day and year aforesaid.

ANTHONY L. DAVIS,
Justice of the Peace.

Received for record July twenty-sixth and recorded August second, A. D. eighteen hundred and fifty-two.

W. S. CALDWELL,
Clerk and Recorder.

STATE OF OREGON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing copy of deed with the original record thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same now appears of record in my office and custody.

Witness my hand and the seal of the county court of said county hereto affixed this 30th day of July, A. D. 1872.

[SEAL.] W. D. PITTENGER,
County Clerk.

[U. S. r. stamp, 5 cts., canceled.]

EXHIBIT THIRTY.

"United States district court of Washington County, Oregon Territory.

"VACATION BEFORE APRIL TERM, 1851.

"ZACHARIAH C. NORTON
"*v.*
"GABRIEL WINTER & Benjamin G. Lattimer, (copartners.) } U. S. district court of Washington County.

"The plff. in this case, in addition to the facts stated in the last count of his declaration, will rely on the following bill of particulars:

48 "*Winter & Lattimer to Z. C. Norton, Dr.*

"1850.

"Dec. 20. To the value of the brig Seguin received by you.. $8,000 00

"TERRITORY OF OREGON,
"*County of Washington, ss:*

"Zachariah C. Norton, by R. P. Boise, his attorney, complains of Gabriel Winter and Benjamin G. Lattimer, copartners in trade under the

firm of Winter & Lattimer, in a plea of the case in promises, for that whereas the defendants, on the thirtieth day of December, eighteen hundred and fifty, were indebted to the plaintiff in the sum of ten thousand dollars, for goods sold and delivered before that time by the plaintiff to the defendants at their request; also, in the like sum of money had and received before that time by the defendants for the use of the plaintiff; also, in the like sum for money paid by the plaintiff, before that time, for the defendants at their request; and the defendants afterwards, to wit, on the day and year aforesaid, in consideration of the premises, respectively, promised the plaintiff to pay him the said several sums of money on request, yet the defendants have disregarded their promises, nor hath either of them paid any of the said moneys, or any part thereof, to the damage of the plaintiff of ten thousand dollars;

"Also, for that whereas on the seventeenth day of August, in the year of our Lord eighteen hundred and fifty, the defendants were the owners of three-fourths of a certain brig called the Seguin, and the plaintiff was the owner of one-fourth of said brig, said brig being of the value of eight thousand dollars, which said brig was then duly registered at the port of San Francisco, State of California; and whereas, on the said seventeenth day of August, at said San Francisco, to wit, at Washington County aforesaid, in consideration that the plaintiff, at the special instance and request of the defendants, had bought of said defendants three-fourths of the said brig Seguin, with her tackle and apparel, it being the part of said brig then owned by the defendants, for the sum of three thousand dollars;
49 and, in consideration that the plaintiff, at the like special instance and request of the defendants, then and there paid the defendants the sum of fourteen hundred and seventy-six dollars and eighty-six cents, the same being part of the purchase-money for said three-fourths of said brig, and promised the defendants that he would pay them the balance of said purchase-money for said three-fourths of said brig, to wit, the sum of fifteen hundred and twenty-three dollars, and fourteen dollars, on request, the said defendants then and there delivered said brig, with her tackle and apparel, to the plaintiff, and said defendants then and there promised the plaintiff to make, execute, and deliver to him a bill of sale of said three-fourths of said brig, and all other needful papers necessary or convenient for completing and confirming the plaintiff's title to said brig in the usual manner, and for enabling the plaintiff to get the register of said brig changed and registered in his own name as sole owner thereof on request; and the plaintiff avers that, although he has ever been ready and willing to pay the balance due for said brig on request, yet the defendants, though requested, have not made and executed a bill of sale of said brig Seguin, or other papers, to the plaintiff necessary to enable the plaintiff to procure the register of said brig to be changed, and have the same registered in his own name as sole owner thereof, but have disregarded their said promises and undertakings, and, fraudulently intending to deceive the plaintiff in this behalf, have claimed to be owners of three-fourths of said brig since they sold the same to the plaintiff as aforesaid, and have, by virtue of the aforesaid register of said brig at San Francisco aforesaid, obtained possession of said brig from the servants of the plaintiff and sent said brig to parts unknown to the plaintiff, whereby the plaintiff has wholly lost the said brig, to his damage, as he says, the sum of ten thousand dollars, and therefore he brings this suit.

"R. P. BOISE, *Atty.*

"Dated April 8th, 1851.

"OREGON TERRITORY,
"*Washington County, ss:*

"To the sheriff of the county of Washington aforesaid:

50 "In the name of the United States of America, you are required to summon Gabriel Winter and Benjamin G. Lattimer, both of the city of San Francisco, in the State of California, copartners in trade under the firm of Winter & Lattimer, (if they may be found in your county,) to appear before our district court of the United States next to be holden within and for the county of Washington aforesaid, at Hillsborough, in said county, on the third Tuesday next after the first Monday of April next, then and there, in our said court, to answer unto Zachariah C. Norton, of said county, in a plea of the case, which plea the said plaintiff has commenced against the said defendants, to be heard and tried in our said court, wherein the said plaintiff claims damages against the defendants in the sum of ten thousand dollars.

"Hereof fail not, and make due return of this writ, and your doings thereon, to the said district court on the first day of the next term thereof, and have you then and there this writ.

"Witness O. C. Pratt, esq., presiding judge of said court, at Hillsborough, in said county, this second day of January, A. D. eighteen hundred and fifty-one, with the private seal of the clerk of said court hereto affixed, there being no public seal yet provided for said court.

[SEAL.] "R. WILCOX,
"*Clerk of the Dist. Court.*

"By virtue of the within writ I have this day attached the undivided half of the property named in the annexed inventory. Dated at Portland 4th day of January, A. D. 1851.

"W. H. BENNETT,
"*Sheriff W. C., O. T.*"

STATE OF OREGON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing copies of complaint and summons with the originals thereof, and that they are true transcripts therefrom, and of the whole of such originals, as they now appear in my office and in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of the county court of said county this 30th day of July, A. D. 1872.

[SEAL.] W. D. PITTENGER,
County Clerk.

[U. S. rev. stamp, 5 cts., canceled.]

51 EXHIBIT THIRTY-ONE.

"District court United States, for the district of Oregon, Washington County. April term, A. D. 1851.

"MONDAY, *April 21st, A. D.* 1851.

"No judge being present, court stands adjourned until to-morrow.

"TUESDAY, *April 22nd, A. D.* 1851.

"Court convened, pursuant to adjournment, and under the following notice, to wit:

"PORTLAND, *April 7th*, 1851.

"To the clerk of the district court for Washington County, Oregon Territory:

"You are hereby notified that, on the 22nd day of April, instant, I will hold a special term of the district court at the county-seat of Washington County, for the purpose of the trial of William Keen, charged with the crime of murder, in pursuance of the notice from the sheriff and a request to appoint a time for holding a special term of the district court, and for the transaction of such other business as may be before the court.

"WM. STRONG, *Judge*.

"Whereupon the following (proceeding was had, to wit:)

WEDNESDAY, *April 23rd*, *A. D.* 1851.

"Z. C. NORTON, *v.* "WINTER & LATTIMER. } Plea of the case upon promises.

"Cause continued on defendant's motion, and at his costs.

"WM. STRONG, *Judge*.

"October term, A. D. 1851.

"DISTRICT COURT UNITED STATES,
District of Oregon, County of Washington, ss:

"MONDAY, *October 20th*, *A. D.* 1851.

"Be it remembered that, on this 20th day of October, A. D. 1851, a term of the district court of the United States, in and for the county of Washington, and Territory of Oregon, was begun and holden at Hillsborough, in said county, the honorable O. C. Pratt, judge of the
52 2d judicial district, in and for said Territory, presiding.

"Present, J. L. Meek, U. S. marshal, and Wm. H. Bennett, sheriff of the county; whereupon the following (among other) proceedings was had, that is to say:

"MONDAY MORNING, *October 27th*, 1851.

"Present, same officers.

"ZACHARIAH C. NORTON *v.* "GABRIEL WINTER AND BENJAMIN G. LATTIMER. } Trespass on the case on promises.

"And now, at this day, came the plaintiff in the above-entitled cause, by his counsel, and moved the court that the default of the defendants be entered for want of a plea to the declaration heretofore filed in this cause, and thereupon came W. W. Chapman, esq., on behalf of the defendants, and stated that he entered a special appearance for the purpose only of resisting said motion, and objected to the same; and it appearing to the court that due service of the summons, heretofore issued in this cause, had been made on the defendant, Gabriel Winter, one of the defendants in this cause, more than ten days before the pres-

"OREGON TERRITORY,
"*Washington County, ss:*

"To the sheriff of the county of Washington aforesaid:

50 "In the name of the United States of America, you are required to summon Gabriel Winter and Benjamin G. Lattimer, both of the city of San Francisco, in the State of California, copartners in trade under the firm of Winter & Lattimer, (if they may be found in your county,) to appear before our district court of the United States next to be holden within and for the county of Washington aforesaid, at Hillsborough, in said county, on the third Tuesday next after the first Monday of April next, then and there, in our said court, to answer unto Zachariah C. Norton, of said county, in a plea of the case, which plea the said plaintiff has commenced against the said defendants, to be heard and tried in our said court, wherein the said plaintiff claims damages against the defendants in the sum of ten thousand dollars.

"Hereof fail not, and make due return of this writ, and your doings thereon, to the said district court on the first day of the next term thereof, and have you then and there this writ.

"Witness O. C. Pratt, esq., presiding judge of said court, at Hillsborough, in said county, this second day of January, A. D. eighteen hundred and fifty-one, with the private seal of the clerk of said court hereto affixed, there being no public seal yet provided for said court.

[SEAL.] "R. WILCOX,
"*Clerk of the Dist. Court.*

"By virtue of the within writ I have this day attached the undivided half of the property named in the annexed inventory. Dated at Portland 4th day of January, A. D. 1851.

"W. H. BENNETT,
"*Sheriff W. C., O. T.*"

STATE OF OREGON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing copies of complaint and summons with the originals thereof, and that they are true transcripts therefrom, and of the whole of such originals, as they now appear in my office and in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of the county court of said county this 30th day of July, A. D. 1872.

[SEAL.] W. D. PITTENGER,
County Clerk.

[U. S. rev. stamp, 5 cts., canceled.]

51 EXHIBIT THIRTY-ONE.

"District court United States, for the district of Oregon, Washington County. April term, A. D. 1851.

"MONDAY, *April 21st, A. D.* 1851.

"No judge being present, court stands adjourned until to-morrow.

"TUESDAY, *April 22nd, A. D.* 1851.

"Court convened, pursuant to adjournment, and under the following notice, to wit:

"PORTLAND, *April 7th*, 1851.

"To the clerk of the district court for Washington County, Oregon Territory:

"You are hereby notified that, on the 22nd day of April, instant, I will hold a special term of the district court at the county-seat of Washington County, for the purpose of the trial of William Keen, charged with the crime of murder, in pursuance of the notice from the sheriff and a request to appoint a time for holding a special term of the district court, and for the transaction of such other business as may be before the court.

"WM. STRONG, *Judge*.

"Whereupon the following (proceeding was had, to wit:)

WEDNESDAY, *April 23rd*, *A. D.* 1851.

"Z. C. NORTON, *v.* "WINTER & LATTIMER. } Plea of the case upon promises.

"Cause continued on defendant's motion, and at his costs.

"WM. STRONG, *Judge*.

"October term, A. D. 1851.

"DISTRICT COURT UNITED STATES,
District of Oregon, County of Washington, ss:

"MONDAY, *October 20th*, *A. D.* 1851.

"Be it remembered that, on this 20th day of October, A. D. 1851, a term of the district court of the United States, in and for the county of Washington, and Territory of Oregon, was begun and holden at Hillsborough, in said county, the honorable O. C. Pratt, judge of the
52 2d judicial district, in and for said Territory, presiding.

"Present, J. L. Meek, U. S. marshal, and Wm. H. Bennett, sheriff of the county; whereupon the following (among other) proceedings was had, that is to say:

"MONDAY MORNING, *October 27th*, 1851.

"Present, same officers.

"ZACHARIAH C. NORTON *v.* "GABRIEL WINTER AND BENJAMIN G. LATTIMER. } Trespass on the case on promises.

"And now, at this day, came the plaintiff in the above-entitled cause, by his counsel, and moved the court that the default of the defendants be entered for want of a plea to the declaration heretofore filed in this cause, and thereupon came W. W. Chapman, esq., on behalf of the defendants, and stated that he entered a special appearance for the purpose only of resisting said motion, and objected to the same; and it appearing to the court that due service of the summons, heretofore issued in this cause, had been made on the defendant, Gabriel Winter, one of the defendants in this cause, more than ten days before the pres-

ent term, and that both of the defendants, by their counsel, Chapman & Marye, had heretofore appeared generally in said cause, by an application to the judge of this district, at chambers, on due notice previously given to the plaintiff for a change of venue of this cause to another district. It was therefore ordered by the court, that if the defendants did not interpose a plea by to-morrow morning at eight o'clock, the motion of said plaintiff for a default should be allowed.

"O. C. PRATT,
"*Judge 2nd Jud. District, Oregon Territory.*"

And, also, the following:

"TUESDAY MORNING, *October 28th*, 1851.

"Same officers present.

53 "ZACHARIAH C. NORTON
v.
"GABRIEL WINTER AND BENJAMIN G. LATTIMER. } Tresspass on the case on promises.

"And now at this day, came the plaintiff in the above-entitled cause, and renewed the motion entered on yesterday to enter the default of the defendants for want of a plea, and thereupon came W. W. Chapman, esq., counsel for the defendants, and filed, on behalf of said defendants, a plea in abatement, and, at the same time, that he appeared only for that purpose. Thereupon came the plaintiff, by his counsel, and filed his replication to said plea, and issue being joined on said plea, and it appearing to the court that the matters in said issue referred to the record in this cause, and, on inspection of the same, found the matters and things, in said plea contained, not to be true, and thereupon rendered judgmen' on said plea for the plaintiff, and further adjudged that said defendants answer over, and afterwards, to wit, on the same day, the said defendants, by their counsel, W. W. Chapman, esq., came and filed, in said cause, their demurrer to the plaintiff's declaration heretofore filed in said cause, the said counsel then and there stating to the court that he only appeared for the defendants for that special purpose. Whereupon, and after issue joined upon said demurrer, the court proceeded to consider the same, and, after advisement, adjudged that the said demurrer was not well taken, and overruled the same; and afterwards, to wit, on the same day came the defendants in said cause, by Chapman and Marye, their counsel, and prayed leave of the court to file their plea to the merits to the said plaintiff's declaration, which said leave was granted, and thereupon a plea of non assumpsit, by said defendants, was interposed and filed in said cause, and, after issue joined, and the respective parties being ready, a jury came, that is to say: Richard Arthur, William Wilson, Sanford Wilcox, Nathan Robinson, E. R. Scott, L. C. Cooper, William S. Rice, William Mauzey, James Johnson, Alvin T. Brown, Robert Walker, John Butt—twelve good and lawful men of the county—to try the issue thus joined, and after hear-
54 ing the proofs and allegations of the respective parties, and the charge of the court, retired to consider of their verdict, in charge of a sworn officer of the court.

"O. C. PRATT,
"*Judge 2d Jud. Dist., Oregon Territory.*"

And, also, the following:

"WEDNESDAY, *October 29th, A. D.* 1851.

"Same officers present.

"ZACHARIAH C. NORTON *v.* "GABRIEL WINTER AND BENJAMIN G. LATTIMER.	Trespass on the case on promises.

"And now, at this day, comes the parties in the above-entitled cause, by their respective counsel, and the jury heretofore empaneled and sworn in this cause being all present, returned into court the following verdict, that is to say: We, the jury, find in favor of the plaintiff, and assess his damages at the sum of four thousand one hundred and twenty-two dollars and forty-one cents; which said verdict was received by the court and ordered to be entered of record, whereupon defendants' counsel gave notice of a motion for a new trial and arrest of judgment.

"O. C. PRATT,
"*Judge 2d Jud. District, Oregon Territory.*"

And also the following, to wit:

"THURSDAY, *November 6th, A. D.* 1851.

"ZACHARIAH C. NORTON *v.* "GABRIEL WINTER AND BENJAMIN G. LATTIMER.	Assumpsit.

"And now, at this day, comes the defendants in the above-entitled cause, by their counsel, and move the court for a new trial, and, after argument of counsel, the said motion was overruled, and it was thereupon ordered by the court the *the* said plaintiff have judgment against the said defendants for the sum of four thousand one hundred and twenty-two dollars and forty-one cents, in pursuance of the ver-
55 dict of the jury heretofore entered in this cause, together with his costs in this behalf wrongfully sustained, and that execution issue therefor.

"O. C. PRATT,
"*Judge 2d Jud. District, Oregon Territory.*"

STATE OF OREGON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing copies of journal entries with the originals thereof, and that they are correct transcripts therefrom, and the whole of said originals, as the same now appear of record in my office and in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of the county court of said county this 30th day of July, A. D. 1872.

[SEAL.] W. D. PITTENGER,
County Clerk.

[U. S. rev. stamp 5 cts., canceled.]

EXHIBIT A.

Be it remembered that heretofore, to wit, on the 13th day of January, A. D. 1864, there was filed in the office of the clerk of the circuit court, for the county of Multnomah, in the fourth judicial circuit of the State of Oregon, the following, that is to say:

In the circuit court of the State of Oregon for Multnomah County.
In equity.

ADDISON M. AND LEWIS M. STARR, PLFFS.,
vs.
BENJAMIN STARK, DEFENDANT.

The plaintiffs represent to the court that they are owners and in possession of lots Nos. one, (1,) two, (2,) and (4) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known and designated on the map of said city, and that they, and those under whom they claim, have been in the peaceable possession thereof since the 13th day of December, 1849, and have made large and valua-
56 ble improvements thereon, of which the said defendant has at all times had notice.

That the said defendant claims the title thereto, adverse to the plaintiffs, and threatens them with suit to obtain the possession thereof.

The plaintiffs therefore pray that the defendant may be compelled to set out by what title he claims said property, and that the rights therein of the plaintiffs and defendant may be determined by this court.

The plaintiffs, further complaining, show to the court that from the 13th day of December, 1849, till about the 20th of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman, were claimants jointly, and settlers, and in possession of what was known as the Portland land-claim. That during the time they were so in possession of said claim, they laid off and sold many lots and blocks in said city, all the while retaining the general possession and ownership of said land-claim, with the avowed and published intention of obtaining from the United States title to said land-claim, and making to the purchasers and holders of lots, particularly to the purchaser of the block in the bill mentioned, a good and sufficient deed therefor, of which the said defendant, Benjamin Stark, then and there had notice.

That, on the 20th day of March, 1850, the said Coffin, Lownsdale, and Chapman, by deed of that date, sold, conveyed, and delivered the possession to said Chapman, for a valuable consideration, block eighty-one, (81,) as known and designated upon the map of said city, as will more fully appear on reference to a copy of said deed, herewith filed, marked (*a*,) and made a part of this bill; and that said Chapman and his grantees, on down to the plaintiffs, have been in the uninterrupted and peaceable possession of said lot ever since the execution of said conveyance, of which the said defendant had knowledge and information.

That it was with the avowed and published intentions, on the part of said Benjamin, of obtaining and retaining the general possession of said land-claim, conveyed to him by said Daniel, and of obtaining title thereto from the United States, and therefrom making and rati-
57 fying and confirming title, by good and sufficient deeds, to the purchasers of lots in said tract from the said Daniel or his lawful attorney in fact, in good faith, for a valuable consideration, that the said Benjamin entered into said agreement with the said Daniel, and accepted and recognized the ratification and amendment thereof of the 13th of April, 1850, herein mentioned, until which time the said Coffin & Chapman were ignorant of said contract and agreement between the said Daniel and the said Benjamin, and particularly on the 20th day of March, 1850, the date of conveyance of block 81 to W. W. Chapman, and the plaintiffs aver that the conveyance of block 81 to said Chapman was in good faith and for a valuable consideration.

The said plaintiffs further show that the said Daniel, being in San Francisco, California, on the 1st day of March, 1850, entered into a certain written agreement with the said defendant, Benjamin Stark, then a resident there, respecting the release to said Stark of a certain part of said claim, subject to the ratification of the same by said Coffin and Chapman. That by the terms of said written agreement and subsequent amendments thereto lawfully made the said defendant, Stark, for a valuable consideration, become bound to ratify and confirm all sales and conveyances of such lots, as aforesaid, prior to the 13th day of April, 1850, which terms and conditions of said agreements and subsequent amendments thereto will more fully and at length appear in reference thereto, a copy whereof is herewith filed, marked "B," and made a part of this bill. That the said defendant, Benjamin Stark, accepted of said release, and entered into the possession of the tract of land so released. That the said block, No. 81, was and is included within the said tract of land so released, and was one of the blocks the sales of which were confirmed as aforesaid, of which the said defendant had notice.

The plaintiffs further show that by a regular chain of title from the said W. W. Chapman to the said plaintiffs they are the owners and in possession of the said lots Nos. one, (1,) two, (2,) and four, (4,) in said block No. 8, in said city. The said Benjamin Stark claims to have received title from the United States for said tract so released, embracing said block. That said Benjamin Stark not only neglects and re-
58 fuses to release and confirm said lots to the plaintiffs, but which, as they are informed and believe, he has declared he will never do, and has departed from the jurisdiction of this court, and does not now reside within the same. The plaintiffs therefore pray that the defendant may be compelled to answer the matter and things herein stated, and, the premises considered, that he be compelled to release to the plaintiffs all his right, title, and interest, and claim in and to the said property, and the plaintiffs, as in duty bound, will ever pray, &c.

CHAPMAN,
Att'o.

STATE OF OREGON,
Multnomah County, ss:

Be it remembered that on this 12th day of January, A. D. 1864, the above-named Louis M. Starr, one of the before-named plaintiffs, personally appeared before me, the undersigned, and made oath that the allegations in the foregoing bill, so far as stated from the knowledge of the plaintiffs, are true, and those stated as from information he believes to be true.

L. M. STARR.

Subscribed and sworn to before me this 12th day of January, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Prec.

In the circuit court of the State of Oregon for Multnomah County. In equity.

ADDISON M. & LEWIS M. STARR, PLAINTIFFS,
vs.
BENJAMIN STARK, DEFENDANT. } Summons.

To the defendant in the above-entitled suit:

You are hereby notified to appear in said court and answer the com-

plaint in said suit, or judgment for want thereof will be taken against you, and the plaintiffs will apply to the court for the relief demanded therein.

W. W. CHAPMAN,
Atty. for Plffs.

Dated at Portland this 13th day of January, A. D. 1864.

59 Endorsed upon the foregoing summons are the words and figures following, viz: Filed January 13th, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

And also the following:

STATE OF OREGON,
Multnomah Co., ss:

I certify that the within-named defendant cannot be found in my county.

R. J. LADD, *Sheriff.*

Fees, 45.
JAN'Y 12th, 1864.

And afterwards, at a term of the circuit court regularly begun and held at the court-house, in the city of Portland, for Multnomah County, State of Oregon, on Monday, the 8th day of February, A. D. 1864, among other the following proceedings were had, to wit:

WEDNESDAY, *February 10th*, 1864—*Third day.*

Order of continuance.

A. M. & L. M. STARR
vs.
BENJAMIN STARK.

Now comes the plaintiffs, by W. W. Chapman, their attorney, and on motion this cause is continued for service by publication:

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards the following was filed in the office of the clerk of the circuit court for Multnomah County, and State of Oregon:

STATE OF OREGON,
Multnomah Co., ss:

A. M. & L. M. STARR, PLAINTIFFS,
vs.
BENJAMIN STARK, DEFENDANT.
In equity.

In the circuit court for said county, Lewis M. Starr, one of the above-named plaintiffs, being sworn, saith, that after due diligence the said Benjamin Stark cannot be found within the State; and that the above-entitled suit in which the plaintiffs have a good cause of action relates to real property within this State; and that, as the plaintiffs are informed and believe the said defendant resides in New London,

60 Connecticut, and is a proper party to said suit. That said defendant is not now a resident of this State, as they are informed, but has property therein.

L. M. STARR.

Subscribed and sworn to before me this 13th day of May, 1864.
LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Indorsed upon the foregoing is the following, to wit:

Order for publication.

STATE OF OREGON,
County of Multnomah, ss:

Upon the within affidavit it is ordered that service of the summons in this suit be made by publication thereof in the weekly Oregonian, a newspaper published in this county, for twelve consecutive weeks, and that a copy of the complaint and summons be forthwith deposited in the post-office, postage prepaid, directed to the defendant, Benjamin Stark, at his residence specified in the within affidavit.

Done at chambers, in Portland, this 13th day of January, 1864.

(Signed) ERASMUS D. SCHATTUCK,
Judge of Cir. Court.

Also indorsed on the foregoing are the words and figures following, to wit: Filed January 13th, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

In the circuit court of the State of Oregon, for Multnomah County. In equity.

A. M. & L. M. STARR
vs.
BENJ. STARK.

I, W. W. Chapman, being sworn, say that on the 16th day January, 1864, I mailed a certified copy of the complaint and summons in the above-entitled cause addressed to Benjamin Stark, New London,
61 Connct.; that the day on which said documents were mailed was the earliest mail practicable after the making said order.

W. W. CHAPMAN.

Subscribed and sworn to before me this 13th day of June, 1864.

J. M. BRECK, *Clerk.*
By W. S. CALDWELL, *Deputy.*

Indorsed upon the foregoing are the words and figures following, to wit: Filed June 14th, 1864. J. M. Breck, clerk. By W. S. Caldwell, deputy.

The following was filed with the clerk of the circuit court for Multnomah County, Oregon, to wit:

Notice.

In the circuit court of the State of Oregon, for Multnomah County. In equity.

ADDISON M. & LEWIS M. STARR, PLAINTIFFS,
v.
BENJAMIN STARK, DEFENDANT.

To the defendant in the above-entitled suit:

The Hon. E. D. Shattuck, judge of said court, having, upon the complaint, summons, and affidavit filed in the above-entitled suit, ordered that service of the summons be made by publication in the weekly Ore-

gonian, a newspaper published in said county, for twelve consecutive weeks, you are therefore hereby notified to appear in said court and answer the complaint in said suit, or judgment for want thereof will be taken against you, and the plaintiffs will apply to the court for the relief demanded therein.

Dated at Portland this 13th day of January, A. D. 1864.

W. W. CHAPMAN,
9:3 m. *Atty. for Plffs.*

Affidavit of publication.

STATE OF OREGON,
Multnomah County, ss:

Henry L. Pittock, being first duly sworn, says that he is publisher and proprietor of the weekly Oregonian, a newspaper of general
62 circulation published in the city of Portland, county and State aforesaid; that the attached advertisement, entitled "Notice, Addison M. & Lewis M. Starr, plaintiffs, v. Benjamin Stark, defendant, in equity," was published in said paper 13 successive weeks, the first publication being in the issue of January 16th, 1863, and the last in the issue of April 9th, 1864, and that during that time said paper was regularly circulated among its subscribers.

HENRY L. PITTOCK.

Subscribed and sworn to before me this 13th day of June, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Indorsed upon the foregoing are the words and figures following, to wit: Filed June 14th, 1864. J. M. Breck, clerk. By W. S. Caldwell, deputy.

And afterwards, at a term of the circuit court for the county of Multnomah, and State of Oregon, began and held at the court-house in the city of Portland, county and State aforesaid, on Monday, June 13th, 1864, it being the day fixed by law for the regular term of said court, among other the following proceedings were had, to wit:

TUESDAY, *June 14th*, 1864.—Second day.

A. M. STARR & L. M. STARR
v.
BENJAMIN STARK.

This day, being the second day of court, came the plaintiffs, by Chapman, their attorney, and it appearing to the satisfaction of the court, by affidavit duly filed and otherwise, that the order of publication made in this cause had been duly published, and a copy of the complaint and summons duly mailed to the defendant, thereupon the plaintiffs moved the court for judgment for want of an answer; whereupon came W. W. Page and A. E. Wait, attorneys of this court, and entered the appearance of the defendant, and on their motion the defendant has until 12 o'clock m. of this day to demur, and has leave until Monday next to
63 answer the complaint in this cause, and before 12 o'clock m., the defendant, by his attorneys, file' demurrer to complaint as follows, to wit: (insert.) (Journal No. 3, page 152.)

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Whereupon the following demurrer was filed in the clerk's office of said court, to wit:

Demurrer.

In the circuit court of the State of Oregon, for the county of Multnomah. June term, A. D. 1864.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

And the said Benjamin Stark, defendant, by Grover & Page and Wait & Kelly, his attys., comes and demurs to the complaint of the plaintiffs in this cause, and alleges the following as grounds of demurrer to said complaint:

1st. The complaint in this cause is not entitled of any term of court.

2nd. It nowhere sufficiently appears in or by said complaint that the said Stephen Coffin, Wm. W. Chapman, and Daniel H. Lownsdale, since deceased, ever had or acquired the ownership of said town-lots specified in said certificate.

3d. The complaint in this cause does not state facts sufficient to constitute a cause of action.

GROVER AND PAGE & WAIT & KELLEY,
Deft's Attys.

Endorsed upon the foregoing are the words and figures following, to wit: Filed June 14, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

Whereupon the following entry was made in the journal of said court upon Friday, June 17, 1864, the same being the fifth day of the June term of Multnomah County circuit court, 1864, to wit, (Journal No. 3, page 169 :)

A. M. & L. M. STARR
vs.
BENJAMIN STARK.

Now comes the plaintiffs, by W. W. Chapman, their attorney,
64 and the defendant by Wait & Page, his attorneys; and the demurrer of defendant to complaint came on to be heard, and, after argument of counsel, said demurrer was sustained by the court, with leave to the plaintiffs to amend.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Amended bill.

In the circuit court of the State of Oregon for Multnomah County.

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFT. } Suit in equity. Amended bill.

The plaintiffs represent to the court that they are the owners and in possession of lots Nos. 1, (one,) 2, (two,) 4, (four,) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known

gonian, a newspaper published in said county, for twelve consecutive weeks, you are therefore hereby notified to appear in said court and answer the complaint in said suit, or judgment for want thereof will be taken against you, and the plaintiffs will apply to the court for the relief demanded therein.

Dated at Portland this 13th day of January, A. D. 1864.

W. W. CHAPMAN,
9:3 m. *Atty. for Plffs.*

Affidavit of publication.

STATE OF OREGON,
Multnomah County, ss:

Henry L. Pittock, being first duly sworn, says that he is publisher and proprietor of the weekly Oregonian, a newspaper of general
62 circulation published in the city of Portland, county and State aforesaid; that the attached advertisement, entitled "Notice, Addison M. & Lewis M. Starr, plaintiffs, v. Benjamin Stark, defendant, in equity," was published in said paper 13 successive weeks, the first publication being in the issue of January 16th, 1863, and the last in the issue of April 9th, 1864, and that during that time said paper was regularly circulated among its subscribers.

HENRY L. PITTOCK.

Subscribed and sworn to before me this 13th day of June, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

Indorsed upon the foregoing are the words and figures following, to wit: Filed June 14th, 1864. J. M. Breck, clerk. By W. S. Caldwell, deputy.

And afterwards, at a term of the circuit court for the county of Multnomah, and State of Oregon, began and held at the court-house in the city of Portland, county and State aforesaid, on Monday, June 13th, 1864, it being the day fixed by law for the regular term of said court, among other the following proceedings were had, to wit:

TUESDAY, *June 14th*, 1864.—Second day.

A. M. STARR & L. M. STARR
v.
BENJAMIN STARK.

This day, being the second day of court, came the plaintiffs, by Chapman, their attorney, and it appearing to the satisfaction of the court, by affidavit duly filed and otherwise, that the order of publication made in this cause had been duly published, and a copy of the complaint and summons duly mailed to the defendant, thereupon the plaintiffs moved the court for judgment for want of an answer; whereupon came W. W. Page and A. E. Wait, attorneys of this court, and entered the appearance of the defendant, and on their motion the defendant has until 12 o'clock m. of this day to demur, and has leave until Monday next to
63 answer the complaint in this cause, and before 12 o'clock m., the defendant, by his attorneys, file' demurrer to complaint as follows, to wit: (insert.) (Journal No. 3, page 152.)

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Whereupon the following demurrer was filed in the clerk's office of said court, to wit:

Demurrer.

In the circuit court of the State of Oregon, for the county of Multnomah. June term, A. D. 1864.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

And the said Benjamin Stark, defendant, by Grover & Page and Wait & Kelly, his attys., comes and demurs to the complaint of the plaintiffs in this cause, and alleges the following as grounds of demurrer to said complaint:

1st. The complaint in this cause is not entitled of any term of court.

2nd. It nowhere sufficiently appears in or by said complaint that the said Stephen Coffin, Wm. W. Chapman, and Daniel H. Lownsdale, since deceased, ever had or acquired the ownership of said town-lots specified in said certificate.

3d. The complaint in this cause does not state facts sufficient to constitute a cause of action.

GROVER AND PAGE & WAIT & KELLEY,
Deft's Attys.

Endorsed upon the foregoing are the words and figures following, to wit: Filed June 14, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

Whereupon the following entry was made in the journal of said court upon Friday, June 17, 1864, the same being the fifth day of the June term of Multnomah County circuit court, 1864, to wit, (Journal No. 3, page 169:)

A. M. & L. M. STARR
vs.
BENJAMIN STARK.

Now comes the plaintiffs, by W. W. Chapman, their attorney,
64 and the defendant by Wait & Page, his attorneys; and the demurrer of defendant to complaint came on to be heard, and, after argument of counsel, said demurrer was sustained by the court, with leave to the plaintiffs to amend.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Amended bill.

In the circuit court of the State of Oregon for Multnomah County.

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFT. } Suit in equity. Amended bill.

The plaintiffs represent to the court that they are the owners and in possession of lots Nos. 1, (one,) 2, (two,) 4, (four,) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known

and designated upon the map of said city, and that they and those under whom they claim have been in the peaceable possession thereof since the 13th day of December, 1849, and have made large and valuable improvements thereon, of which the said defendants have at all times had notice.

The plaintiffs further represent that from the 13th of December, 1849, till about the 20th day of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman were claimants jointly and settlers, and in possession as such of what was known as the Portland land-claim, a tract of land of about 640 acres, embracing the said city of Portland; that during the time they were so in possession of said claim they laid off and sold many lots and blocks in said city, all the while retaining the general possession and claim of ownership of said land-claim, with the avowed and published intention of obtaining from the United States title to said land-claim, and making to the purchasers and holders of the block 81, in the bill mentioned, a good and sufficient deed therefor, of which the said defendant, Benjamin Stark, then and there had notice; that on the 20th day of March, 1850, the said Coffin, Lownsdale, and Chapman, by deed of that date, sold and conveyed to the said W. W. Chapman the said block in said city, and delivered the possession thereof accordingly, as will more fully appear on reference to a copy of said deed herewith filed, marked, (B,)
65 and made a part of this bill; and that the said Chapman and his grantees, on down to the plaintiff, have been in the uninterrupted and peaceable possession of said lots ever since the execution of said conveyance until as herein complained of, of which the said defendant has at all times had notice. The plaintiffs further shew that the said Daniel, being in San Francisco, California, on the first day of March, 1850, entered into a certain written agreement with the said Benjamin Stark, then a resident there, respecting the sale or release to said defendant of a certain part of said claim, subject to the ratification of the same, or certain portions thereof, by said Coffin and Chapman; that by the terms of said written agreement and subsequent amendments thereto, lawfully made, the said defendant, Stark, for a valuable consideration, become bound to ratify and confirm all sales and conveyances of such lots, as aforesaid, prior to the 13th day of April, 1850, the time the said Coffin and Chapman first had notice of said written agreement, which will more fully and at large appear on reference to said agreement, a copy of which is herewith filed, marked, (C,) and made a part of this complaint; that it was with the avowed and published intention (on the part of the said Benjamin) of obtaining and retaining the general possession of said land-claim, conveyed to him by said Daniel, and of obtaining title thereto from the United States, ratifying and confirming said sales and conveyances, and erecting good and sufficient deeds to the purchasers of lots in said tract from the said Daniel, or his lawful attorneys in fact, in good faith, for a valuable consideration; that the said defendants entered into said agreements with said Daniel, and accepted and recognized the ratification and amendment of said agreement of the 13th of April, 1850, until which time the said Coffin and Chapman were ignorant of said contract and agreement between the said Daniel and said Benjamin, and particularly on the 20th day of March, 1850, the date of the conveyance of block 81 to W. W. Chapman, made in good faith and for a valuable consideration; that said Benjamin accepted of said release, ratification, and amendment thereof, and entered into the possession of the tract of land so released, which included the said block No. 81, and was and is one of the blocks the sales and

66 conveyances whereof was to be by the said Benjamin ratified and confirmed; of all of which the said defendant had notice. The plaintiffs further shew that, by a regular chain of title from said W. W. Chapman to said plaintiffs, they are the owners of and in possession of said lots Nos. one, (1,) two, (2,) and four, (4,) in said block No. 81, in said city; that the said Benjamin Stark claims to have received a title from the United States for said tract so released, embracing said block, and sets up said title in virtue of an alleged patent from the United States to himself, bearing date the 8th day of December, 1860, a copy of which is herewith filed, marked, (D,) and made part of this bill; but now so it is that the said defendant not only refuses to recognize, ratify, or confirm the sales and conveyances of the lots aforesaid claimed by them, but insists upon claiming the said lots by virtue of said patent, and has threatened to sue the plaintiffs for the possession thereof, and denies the plaintiffs' right either under the said agreement, amendments, and ratifications, and recognitions, or under the said city patent, or the reservations in his said patent contained, by means whereof the plaintiffs' title and right to said property is greatly clouded, and his possession greatly jeopardized. Wherefore, the *the* plaintiffs pray that the said patent of the said defendant may be set aside and held for naught, and that he be compelled to release to the plaintiffs all his right, title, and interest, claim and demand, to the said lots, and forever restrained from setting up any title to said property by means of the premises, and that the plaintiffs have such other further and general relief as to equity appertains.

CHAPMAN, *Att'y.*

OREGON, *Multnomah County, ss:*

A. M. Starr, one of the plaintiffs, being sworn, says that the facts set forth in the foregoing complaint are true, as he verily believes.

A. M. STARR.

Subscribed and sworn to before me this 19th day of August, A. D. 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

(*a.*)

67 Certificate No. 19.

The United States of America, to all to whom these presents shall come, greeting:

Whereas the corporate authorities of the city of Portland, in Multnomah County, Oregon, in trust for the several use and benefit of the occupants thereof, according to their respective interests, under the town-site act of Congress, approved 23d May, 1844, entitled An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances, have deposited in the General Land-Office of the United States a certificate of the register of the land-office at Oregon City, whereby it appears that full payment has been made by the said corporate authorities of the city of Portland, and interest as aforesaid, according to the provisions of the act of Congress of 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the south half of the southwest quarter, and river-lot number eight of section thirty-four, in township one north, of range one east; river-lots numbered five and six; the west half of the northwest

quarter, and the northwest quarter of the southwest quarter of section three, in township one south, of range east, in the district of lands subject to sale at Oregon City, Oregon, containing three hundred and seven acres and forty-nine hundredths of an acre, subject, however, to the decision of the Commissioner of the General Land-Office, 18th October, 1858, expressly reserving any valid claims which may exist in virtue of the several donations of Benjamin Stark, certif. No. 69; Daniel H. Lownsdale, certif. No. 1022; William W. Chapman, certif. No. 68; and Stephen Coffin, certif. No. 67, according to the official plat of the surveys of the said lands returned to the General Land-Office by the surveyor-general, which said tracts have been purchased by the said corporate authorities of the city of Portland, and in trust as aforesaid. Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said corporate authorities of the city of Portland, in trust for the several use and benefit of the occupants thereof, according to their respective interests under said
68 act of 23d May, 1844, and to their successors and assigns, in trust as aforesaid, the said tracts above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said corporate authorities of the city of Portland, in trust for the several use and benefit of the occupants thereof according to their respective interests under said act of 23rd May, 1844, and to their successors and assigns, in trust as aforesaid, subject, however, to the conditions and reservations herein expressed.

In testimony whereof I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fifth.

By the President:

JAMES BUCHANAN,
By J. B. LEONARD, *Sec'y.*
J. M. GRANGER,
Recorder of the General Land-Office.

Recorded vol. 1, page 1, E.
Rec'd for record September 12th, 1862.

STATE OF OREGON,
Multnomah County, ss:

I hereby certify that the copy of the instrument of writing hereto attached has been compared by me with the record of the original, recorded on pages 661 and 662 of book C of the record of deeds of said county, in said State, and that it is a correct transcript of the whole of said original certificate No. 19, as appears of record in said book in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal at office in Portland, the 12th day of July, A. D. 1864.

[SEAL.] H. C. COULSON,
County Clerk.

Indorsed upon the foregoing are the words and figures following, to wit:

69 Filed July 12th, 1864. H. C. Coulson, clerk.

EXHIBIT B.

(B.)

This indenture, made and entered into this 20th day of March, A. D. 1850, between Stephen Coffin, D. H. Lownsdale, and W. W. Chapman, proprietors, of Portland, of the first part, and W. W. Chapman, of Portland, Washington County, Oregon, of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of two thousand dollars, the receipt whereof is hereby acknowledged, doth release, confirm, and quit-claim unto the said Chapman the following-described property in the said town of Portland, to wit, lots No. 1, (one,) 2, (two,) 3, (three,) and 4, (four,) in fractional block No. 81, (eighty-one,) being the warehouse fraction, and situated east of Water street, to the water north of Oak street, and south of Pine street, according to the plat of said town.

In testimony whereof the parties have hereunto set their hands and seals the day and year aforesaid.

(Signed) S. COFFIN. [SEAL.]
D. H. LOWNSDALE,
By his attorney in fact, W. W. CHAPMAN. [SEAL.]
W. W. CHAPMAN. [SEAL.]

No endorsement of filing B.

EXHIBIT C.

(C.)

This indenture, made the first day of March, one thousand eight hundred and fifty, by and between Benjamin Stark, of the town of San Francisco, California, party of the first part, and Daniel H. Lownsdale, of Portland, Oregon, party of the second part, witnesseth: Whereas it is deemed expedient, by the parties hereto, to determine, settle, and adjust the title and possession of certain lands hereinafter described, and to preclude all future controversy in the premises, now, therefore, the parties aforesaid, in consideration of the mutual covenants and agreements hereinafter contained, and of one dollar by each of the said parties to the other in hand paid, the receipt whereof is hereby acknowledged, have concluded, covenanted, and agreed as follows: The said party of the first part has bargained, sold, remised, released, and forever quit-claimed, and by these presents does bargain, sell, remise, release, and forever quit-claim, unto the said party of the second
70 part, his heirs and assigns, all his right, title, and interest in all that portion or parcel of a certain tract of land known as the Portland land-claim, and lying in the county of Washington, (late Tuality,) in Oregon, aforesaid, on the west bank of the Willamette River, situate south of a certain line described as follows: beginning at the point on the west bank of said river, at low-water mark, easterly from the southeast corner of a certain tract of land, or oblong piece of ground, known on the plat of said town of Portland as Stark's block, when a

straight line running parallel with Washington street (late Tuality) will cut the river aforesaid; thence running westerly to the southeast corner of said Stark's block; thence westerly with the dividing-line between said Stark's block and an oblong piece of ground, formerly known as the Pettigrove block, the same on which the dwelling-house is situated, now occupied by the said Daniel H. Lownsdale and Stephen Coffin, to the southwest corner of said Stark's block; thence westerly with the the same bearings of said line, and parallel with Washington (late Tuality) street, to the outer line of the claim aforesaid; to have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereunto belonging or appertaining, unto the said party of the first part, his heirs and assigns, to his and their sole use and behoof forever, so that neither the said party of the second part, nor his heirs, nor any person claiming under him or them, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever; hereby ratifying and confirming all conveyances which the said party of the first part has heretofore made, or may hereafter make, forever, in the premises so as aforesaid by the said party of the second part quit-claimed; and the said party of the first part, so far as his right, title, and interest are concerned, hereby ratifies and confirms all conveyances made by the said party of the second part, or his lawful attorney, previous to the first day of January, one thousand eight hundred and fifty, of the following lots, namely: Lots numbered one and three in block twenty-six; lots numbered three and four in the block where the school-house stands; and lots numbered one, two, three, and four in block numbered seventeen, all said lots lying
71 north of said line, and being numbered and described *and described* on the plat of the town of Portland aforesaid. And the said party of the first part likewise ratifies and confirms all grants or conveyances made by the said party of the second part, or his lawful attorney, in good faith and for a valuable consideration, to this date, subsequent to said first day of January, of lots situated north of said line; provided always, and the said party of the second part hereby covenants for himself, his heirs, executors, and administrators that he will pay over all sums of money which have, since first day of January, been, or may hereafter be, paid unto the said party of the second part, his heirs, executors, administrators, or assigns, for and in consideration of the grant and conveyances aforesaid; and the said party of the second part further covenants, for himself, his heirs, executors, and administrators, that in case any person or persons holding or claiming under him, except the holders of those lots, and under those conveyances especially hereinbefore confirmed by the said party of the first part, shall refuse to satisfy and confirm this indenture, he, the said party of the second part, will, at the option of the said party of the first part, at any time within six months from this date, cancel this indenture and release all right acquired under these presents by the parties hereto; and the said party of the second part, for himself, his heirs, executors, and administrators, further covenants that he will, within six months from the date of these presents, out of the lots on the south side of the above-described line, and situated in said Portland claim, not now conveyed or granted away by the said party of the second part, or his lawful attorney, make, seal, and deliver to the said party of the first part a deed, good and sufficient in law, of any one unimproved lot, fifty by one hundred feet, which the said party of the first part may select, without cost or expense to the said party of the first part.

In witness whereof the parties hereto have herewith interchangeably set their hands and seals the day and year first above written.

BENJ. STARK.
D. H. LOWNSDALE.

72 Signed, sealed, and delivered in presence of—
JOHN T. EMMET.
H. L. DODGE.

STATE OF CALIFORNIA,
District of San Francisco, ss:

Personally appeared this second day of March, A. D. 1850, Benjamin Stark and D. H. Lownsdale, to me personally known to be the signers and sealers of the *of the* foregoing instrument, and acknowledged that they executed the same, and that it is their free act and deed, for the purposes therein mentioned.

Before me.

JNO. W. GEARY,
First Alcade of the District of San Francisco.

STATE OF CALIFORNIA,
District of San Francisco, ss:

I, Henry L. Dodge, clerk of the alcade's court, and the court of first *justiana*, within and for the district of San Francisco aforesaid, hereby certify that John W. Geary is, and was at the time of taking the foregoing acknowledgment, first alcade of the district of San Francisco aforesaid, and that his signature thereto affixed is genuine.

In witness whereof I have hereunto set my hand and seal of said court this second day of March, A. D. 1850.

H. L. DODGE,
Clerk Court of First Justina, *District of San Francisco.*

Recorded November 23d, A. D. 1850.

WILLIAM GEIGER, JR.,
Recorder.

Exhibit Co Coffin, Chapman and Couch, for Stark.

We, Stephen Coffin & W. W. Chapman, partners with D. H. Lownsdale in the town of Portland, hereby ratify and confirm a certain agreement between Benj. Stark and D. H. Lownsdale, bearing date the first day of March, A. D. 1850, respecting an adjustment of title, hereby placing the disposition of property up to notice of said adjustment upon the same footing with the disposition of property before the first day of January last.

In testimony whereof we have hereunto set our hands and seals the 15th day of April, A. D. 1850.

(Signed) S. COFFIN. [SEAL.]
W. W. CHAPMAN. [SEAL.]

73 PORTLAND, O. T., *April 15th*, 1850.

I ratify the above agreement, as far as my interest is concerned in said property.

JOHN H. COUCH,
For BENJ. STARK.

Recorded this 23d day of November, A. D. 1850.

WILLIAM GEIGER, JR.,
Recorder.

Endorsed upon the foregoing are the words and figures following, to wit: "Filed Jan. 13, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy."

Donation certificate No. 69.] [Notification No. 328.

Whereas in conformity with the provisions of the 7th section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the public lands," Benjamin Stark, of the county of Washington, in the said Territory, claiming a donation-right in virtue of the act aforesaid to the following tract of public lands, known and designated in the surveys and plats of the United States as the claim No. 45, being parts of 33 & 34, T. 1 N., R. 1 E., and claim No. 47, being part of section 3, T. 1 S., R. 1 E., particularly bounded and described as follows: Beginning at a point 16.34 chains north of the S. W. corner of section 34, T. 1 N., R. 1 E.;

Thence S. 70° 15′ E., 47.25 chains;
" N. 4° " E., 0.37 "
" N. 25° " E., 5.43 "
" N. 4° " E., 6.52 "
" N. 11° " E., 5.42 "
" N. 89° 70′ W., 53.57 "
" S. 70° 15′ E., 5.64 "

to the place of beginning, containing 48.02 acres. Having proven, to the satisfaction of the surveyor-general of Oregon, the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date hereof, and having, in pursuance of the requirements of the 7th section of the act aforesaid, established, by two
74 disinterested witnesses, the fact of continual residence and cultivation required by the 4th section of the said act:

Now, therefore, be it known that I, John B. Preston, surveyor general of public lands in Oregon, do hereby, and pursuant to the 7th section of the act aforesaid, certify to the Commissioner of the General Land-Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to said claimant for the tract of land described, as required by the 7th section of the act aforesaid, provided the said Commissioner shall find no valid objection thereto.

Given under my hand at the office of the surveyor-general of public lands in Oregon, this tenth day of September, 1853.

JNO. B. PRESTON,
Surveyor-General of Public Lands in Oregon.

Indorsed on the foregoing are words and figures following, to wit:

I, Wm. A. Starkweather, register of the U. S. land-office at Oregon City, Oregon, hereby certify that the within is a correct copy of the donation-certificate of Benjamin Stark, issued by John B. Preston, September tenth, 1853, on file in this office; that I have carefully compared it with the original certificate No. 69, and that it is full and complete transcript of said original.

WM. A. STARKWEATHER,
Register.

LAND-OFFICE, OREGON CITY, OREGON, *July 9th*, 1864.

D.

And also the following was indorsed on the same, that is to say: Filed July 12th, 1864. H. C. Coulson, clerk.

EXHIBIT E.

E.

The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land-Office of the United States a certificate numbered sixty-nine of the surveyor-general of the public lands in Oregon, whereby it appears that under the provisions of the act of Congress approved the 27th day of September,
75 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," the claim of Benjamin Stark, of Washington County, Oregon, notification No. 328, has been established to a donation of one half-section, or 320 acres of land, and that the same has been surveyed and designated as claim No. 45, being parts of sections 33 & 34, in township one north, of range one east, and claim No. 47, being part of section 3, in township one south, of range one east, according to the official plat of survey returned to the General Land-Office by the surveyor-general, being bounded and described as follows, to wit: Beginning at a point sixteen chains and thirty-four links north of the southwest corner of section thirty-four, in township one north, range *of* one east; thence south seventy degrees and fifteen minutes east, forty-seven chains and twenty-five links; thence north four degrees east, thirty-seven links; thence north twenty-five degrees east, five chains and forty-three links; thence north four degrees east, six chains and fifty-two links; thence north eleven degrees east, five chains and forty-two links; thence north eighty-nine degrees and ten minutes west, fifty-three chains and fifty-seven links; thence south seventy degrees and fifteen minutes east, five chains and sixty-four links to the place of beginning in the Willamette land-district, Oregon Territory, containing forty-eight acres and 2-100.

RESERVATION.

And whereas it appears that the greater portion of this claim is covered by an entry made on the first day of February, 1858, by the corporate authorities of the city of Portland, which entry has been approved and will be patented to the said corporate authorities in trust for the several use and benefit of the occupants thereof according to their respective interests: Now know ye that the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, have given, granted, and by these presents do give and grant, unto the said Benjamin Stark, the tract of land above described, subject to such rights as may exist in virtue of the aforesaid entry for the city of Portland: to have and to hold the said tract,
76 with the appurtenances, unto the said Benjamin Stark, and to his heirs and assigns, forever, subject as aforesaid to said entry for the city of Portland.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this 8th day of December, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fifth.

By the President:

JAMES BUCHANAN,
By J. B. LEONARD,
Secretary.

Recorded vol. 1, page 464.

J. W. INGRAM,
Recorder General Land-Office.

(Indorsed upon the foregoing are the words and figures following, to wit:) Filed August 20th, 1864. H. C. Coulson, clerk.

And afterwards the following was filed in the office of the clerk of the circuit court for the county of Multnomah, to wit:

Answer to amen'd bill.

In the circuit court of the State of Oregon for the county of Multnomah. In equity.

ADDISON M. & LEWIS M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFENDANT.

And the said defendant, Benjamin Stark, by Grover & Page, and Wait & Kelly, his attorneys, come, and, for answer to the amended complaint of the plaintiffs in this cause, say that it is untrue, and he denies that the plaintiffs are the owners of lots numbered one, two, and four in block numbered eighty-one, in the city of Portland, specified in said complaint. The defendant denies that the plaintiffs and those under whom they claim have been in the peaceable possession of said lots since the 13th day of December, 1849. The defendant admits that the plaintiffs now are and for some time past have been in the possession of said lots, and that they have made valuable improvements thereon; but he avers that the entire possession by said plaintiffs of said lots and the said improvements thereon
77 have been held, and made with full knowledge on their part; that the defendant was the claimant under the act of Congress of Sept. 27th, 1850, commonly called the "donation law," and the amendments thereto, of a tract of land including said town lots; the plaintiff denies that from the 13th day of December, 1849, till about the 20th of March, 1850, S. Coffin, D. H. Lownsdale, now deceased, and W. W. Chapman, were claimants jointly, and settlers, and in possession of what was known as the Portland land-claim; the defendant denies that the said Coffin, Lownsdale, and Chapman retained or held the quiet possession or ownership of said land-claim. And as to whether the said Coffin, Lownsdale, or Chapman avowed or published there intention of obtaining from the United States, title to said land-claim, or making to the purchasers or holders of lots, or particularly to the purchasers of the block in the bill mentioned, a good and sufficient title thorefor, said defendant has no knowledge or information sufficient to form a belief, but he denies notice of an avowal, or published intention thereof, by them. As to whether, on the 20th day of March, 1850, the said Coffin, Lowns-

dale & Chapman, by deed, sold or conveyed, or delivered the possession to said Chapman, for a valuable consideration, block eighty-one, specified in said bill of complaint, the said defendant has no knowledge or information, sufficient to form a belief; the defendant denies that the said Chapman and his grantees, on down to the plaintiff, have been in the uninterrupted and peaceable possession of said lots ever since the execution of said conveyance, and the defendant denies knowledge and information, as charged in said complaint. The defendant admits that the said Daniel H. Lownsdale, since deceased, being in San Francisco, California, on the 1st day of March, A. D. 1850, entered into a certain written agreement with the defendant, Benjamin Stark, respecting the Portland land-claim; that defendant denies that he was then a resident of said San Francisco, or of California, and he denies that the said agreement was made, subject to the ratification thereof, by said Coffin and Chapman; the defendant denies that he accepted or recognized any ratification or amendment of said agreement, made on the 13th of April, 1850, or otherwise. As to whether said Coffin and Chapman were
78 ignorant of said agreement between said Lownsdale and said defendant, until the 20th day of March, 1850, the defendant has no knowledge or information sufficient to form a belief. As to whether the conveyance of said block 81 to said Chapman was in good faith or for a valuable consideration, the defendant has no knowledge or information sufficient to form a belief. The defendant denies that the so-called amendments to said written agreement were lawfully made; he denies that the subsequent amendments to said written agreement ever were lawful or authorized; the defendant denies that for a valuable consideration, or otherwise, he became bound to ratify and confirm all sales of lots prior to the 13th day of April, 1850; the defendant denies that said block No. 81 was or is included within the said tract of land so released, and he denies that said block was one of the *of the* block, the sales of which were confirmed, and he denies any notice thereof; the defendant denies that by a regular chain of title from the said Chapman, the plaintiffs are the owners of said lots one, two, and four; the defendant denies that he has departed from the jurisdiction of this State, except temporarily, and he avers that he is a citizen of this State. And the said defendant further says that the written agreement specified in the amended complaint was entered into between the said Daniel H. Lownsdale and this defendant in good faith for the purpose of settling their respective rights in and to the Portland land-claim, (but that the so-called amendments, or ratifications thereof, were never authorized by the defendant;) that the said Coffin and Chapman had no authority to enlarge, change, or modify said contract between said Lownsdale and said defendant, and that the said John H. Couch had no authority to make the assumed ratification appended to said agreement, or any other ratification, modification, or charge of said contract; that the defendant is now and at all times has been ready and willing to do and perform all things on his part and behalf, to be done and performed agreeable to the terms of said agreement; but this defendant avers that said Lownsdale wholly neglected and refused to do and perform the conditions of said contract, by him agreed to be done and performed, and that neither the said Lownsdale, his heirs, executors, administra-
79 tors, or assigns have at any time paid, or caused to be paid, any money or moneys for the consideration of the pretended and alleged sales of the lots mentioned in the complaint in the exhibits thereto annexed, nor has the said Lownsdale, or his heirs, executors, or administrators, or assigns, ratified, affirmed, or quit-claimed the lots

sold by this defendant, south of said line, and the said Lownsdale, during his life-time, although often requested, utterly refused and neglected to convey to defendant the lot agreed to be conveyed by him to this defendant, as he was bound to do under the covenants of said agreement. Defendant further shows to the court that neither the said Coffin, nor the said Chapman, the pretended parties to said agreement, nor any one claiming or pretending to own and claim the said lots under them, or either of them, or the said Lownsdale, nor the defendant have at any time paid or caused to be paid to this defendant the alleged consideration, nor any part thereof, for the pretended and alleged sale of said lots mentioned in the complaint; and the said defendant further says that he is the owner of said lots one, (1,) two, (2,) and four, (4,) in block eighty-one, (81,) in the city of Portland, specified in the amended complaint, in fee-simple, and that owns and holds said lots as part and parcel of a tract of land covering said lots by patent from the Government of the United States, bearing date December eighth, A. D. 1860, which said patent was regularly issued and delivered to him.

GROVER AND PAGE & WAIT & KELLEY,
Detf.'s Attys.

STATE OF OREGON,
Multnomah County, ss:

I, A. E. Wait, being duly sworn, say that I am one of the attys. of the defendant in this case, and that I believe the foregoing answer to be true. The reason why this verification is not made by the defendant, Benj. Stark, is, that he now is, and for several months past has been, absent from said county of Multnomah, and said State.

A. E. WAIT.

Subscribed and sworn to this 20th day of June, A. D. 1864, before me.

J. M. BRECK, *Clerk.*
By W. S. CALDWELL, *Deputy.*

80 Indorsed upon the foregoing are the words and figures following, to wit: Filed June 20th, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

And afterwards the following was filed in the office of the clerk of the circuit court for Multnomah, to wit:

Motion to strike out parts of answer.

In the circuit court of the State of Oregon, for Multnomah County. In equity.

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFENDANT.

The plaintiffs, by Chapman, attorney, moves the court to strike out and cause to be made more definite the following clauses and paragraphs of the defendant's answer:

2nd page, strike out the clause from the 11th line to the word "belief" in the 17th line inclusive, because the same is sham, frivolous, and irrelevant.

2nd page, strike out all the 28th, and to the word "the" in the 31st line, because the defendant is estopped by the agreement which sets forth his residence.

3rd page, strike out 10 & 11 lines, because the allegations there made is disposed of by the demurrer, and as sham and irrelevant.

4th page, strike out the allegation from the 5th to 11th line inclusive, as sham and irrelevant. Make more definite and certain.

Page 1, from 12th to 15 line inclusive, make more definite and certain, by stating, if not from 13th Dec'r, how long have they been in possession.

Make more definite and certain the allegation, from the 28th line on first page to the word "and" on 2nd line of 2nd page, because the denial should be in language referring to the particular possession.

2 page, make more definite the allegations on the 21 and 22 lines of 2 page. It is not stated what knowledge and information he denies. There more than one allegation in the complaint, to which it might be applied.

81 2nd page, make more definite and certain the statement from the word "as," on the 34th line, to the word "belief," on the 4th line of the 3rd page, inclusive. It should respond as to the 20th day.

3 page, make more definite & certain the allegations from the word "amendments," in 30th line, to and inclusive of the word "defendant," in 32nd line.

4th page, make more definite and certain the allegation from the 12th line, on page 4, to the close of the answer, by setting forth patent, or patent certificate, or copies thereof.

CHAPMAN,
Atty. for Plffs.

Endorsed upon the foregoing are the words and figures following, viz: Filed June 21, 1864. J. M. Breck, clerk, by W. S. Caldwell, deputy.

Be it remembered that at a regular term of the circuit court of the State of Oregon, for the county of Multnomah, began and held at the court-house, in the city of Portland, on Monday, the 13th day of June, 1864, Hon. Erasmus D. Shattuck, sole judge thereof, among other, the following proceedings were had on Tuesday, July 5th, 1864, it being the 19th judicial day of said term, to wit:

A. M. & L. M. STARR
v.
BENJ. STARK.

Now come the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Wait & Page, his attorneys, and, on motion of the plaintiffs, it is ordered by the court that so much of the defendant's original answer as is embraced in the 8th, 9th, 10th, and 11th lines of the 4th page, and the 24th lines of the amendment to said original answer be, and the same are stricken out, with leave to amend; it is further ordered by the court that plaintiffs reply by the 11th of August next, and that this cause be continued to a special term of this court to be held August 15th, 1864, for a hearing herein. (Journal No. 3, page 216.)

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And the following was also filed in the clerk's office of said circuit court:

82 *Demurrer to amend bill.*

In the circuit court of the State of Oregon for the county of Multnomah, ss:

A. M. & L. M. STARR, PLAINTIFFS, *v.* BENJAMIN STARK, DEFENDANT. } Demurrer to amended complaint.

Benjamin Stark, defendant, demurs to all that portion of the complaint setting up the town-site law of 1844; the issuance of patent to the city of Portland, and the claims of plaintiffs thereunder; for that the same does not state facts sufficient to constitute a cause of action or grounds for suit.

2. And also to the rest of the complaint, because it nowhere appears by said complaint that Stephen Coffin, W. W. Chapman, and Dan'l H. Lownsdale, or either of them, had or acquired the ownership of said town-lots specified in said complaint.

3rd. The complaint in this suit does not state facts sufficient to constitute a cause of action or ground for a suit in equity.

WAIT & KELLY,
GROVER & PAGE,
Attorneys for Defendants.

Indorsed upon the foregoing are the words and figures following, viz: Filed August 23rd, 1864. H. C. Coulson, clerk.

NOTE.—The reply referred to in the following journal-entry cannot be found among the papers filed in this case.

JAS. W. DAVIS, *Copyist.*

Be it remembered that at a special term of the circuit court of the State of Oregon, for the county of Multnomah, began and held at the court-house in the city of Portland, in said county, on Monday, the fifteenth day of August, 1864, being the time fixed by the Hon. Erasmus D. Shattuck, judge of this court, for trial of chancery cases; among other, the following proceedings were had, on Tuesday morning, August 16th, 1864, to wit:

83 A. M. & L. M. STARR *vs.* BENJAMIN STARK.

Now, at this time, comes the plaintiffs, by W. W. Chapman, their atty., and the defendant by Grover, Page, Wait & Kelley, his attorneys; and defendant moves the court to strike out part of reply, and files motion as follows, to wit, (insert,) which said motion the court sustains; and the plaintiff has leave, until Thursday morning next, to file amended complaint; and the plaintiff has leave to withdraw reply filed in this case. (Journal No. 3, page 229.)

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And the following was also filed in the office of the clerk of the circuit court for Moltnomah County, to wit:

Affidavit for a removal of cause, U. S. court.

In the circuit court of the State of Oregon, for the county of Multnomah.

A. M. & L. M. STARR, PLFFS.,
vs.
BENJAMIN STARK, DEFENDANT.

To the hon. circuit court, E. D. Shattuck, judge:

The defendant above named respectfully shows to the said court that he is sued in this court as a non-resident of this State, and is a citizen of the State of Connecticut; that defendant is in the State of Connecticut at this time; that the value of the property in controversy exceeds the sum of three thousand dollars; and the said defendant is willing, and hereby offers as surety, W. S. Ladd and William Cree, as surities, in such sum as may be directed, conditioned, as provided by law, for the removal of suits from the State courts to the circuit court of the United States. Wherefore this defendant prays that all proceedings herein be stayed, and that this suit be certified to the United States circuit court in the manner provided by law.

WAIT & KELLEY,
GROVER & PAGE,
Attys. for Defendant.

STATE OF OREGON,
County of Multnomah, ss:

I, W. W. Page, being sworn, say that I verily believe the fore-
84 going petition to be true; and the reason I make this verification is because the defendant is now in the State of Connecticut, and because that I am one of the attorneys for defendant.

W. W. PAGE.

Sworn to and subscribed before me this 20th August, 1864.

H. C. COULSON, *Clerk*,
By Q. A. BROOKS, *Deputy*.

Indorsed upon the foregoing are the words and figures following, to wit: Filed August 20, 1864. H. C. Coulson, clerk, by Q. A. Brooks, deputy.

And afterwards, during the August special term, 1864, of the circuit court, aforesaid, the following proceedings, among others, was had on Monday, August 22d, 1864, it being the seventh day of said special term, to wit, (Journal No. 3, page 235:)

A. M. & L. M. STARR
vs.
BENJAMIN STARK.

Upon petition of defendant to have this cause removed to the circuit court of the United States for the district of Oregon, Grover & Page & Wait, attorneys, appearing for the defendant, and Chapman, attorney, appearing for the plaintiffs, it is adjudged that said petition be denied, and that the defendant plead by demurrer, if he make that defense to the amended bill on or before the twenty-ninth day of this month, or that he answer on or before the first day of November next. In case a demurrer be filed it is ordered that the same be heard in vacation, upon motion of either party, on notice to the other, as required by statute.

(Signed) ERASMUS D. SHATTUCK, *Judge*.

And afterwards the following entry was made in the journal of the circuit court, to wit, (Journal No. 3, page 244:)

The circuit court of the State of Oregon, for the county of Multnomah. In vacation, after the June term, 1864.

OCTOBER 15, 1864.

A. M. & L. M. STARR
v.
BENJ. STARK.

This day the plaintiffs, by Chapman, their attorney, and the
85 defendant, by Grover & Page, his attorneys, came before the court at chambers, and a hearing of the demurrer, filed by defendant to the amended bill, comes on, and counsel are heard thereon. Whereupon, on consideration thereof, it is ordered by the court that the said demurrer be sustained as to all that portion of the amended complaint which sets up the patent to the city of Portland, and a claim thereunder by reason of reservations in or to the alleged invalidity of the patent to Benjamin Stark. And as to the other portions of said complaint, and the other points specified in the demurrer, said demurrer is overruled, and pencil-marks are drawn across those portions of the complaint as to which the demurrer is sustained. To which ruling and order the parties except.

ERASMUS D. SHATTUCK, *Judge.*

And afterwards the following entry was made in the journal of the circuit court aforesaid, (Journal No. 3, page 247:)

In the circuit court of the State of Oregon, for the county of Multnomah.

AT CHAMBERS, *in vacation, this 28th day of October, A. D.* 1864.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

On this day comes W. W. Chapman, attorney for the plaintiffs, and Grover & Page, attorneys for the defendant, and, on motion of the plaintiffs, it is ordered that the order of the court heretofore made in this cause in vacation, and entered, sustaining the demurrer of the defendant to the amended complaint in part, and overruling the same in part, be, and it is, set aside and taken for naught; and the plaintiffs have leave to amend their bill of complaint, and are ordered to elect which cause of suit they will proceed upon, and to set forth the same in the said amended bill to be filed, to which order, requiring the plaintiffs to elect, the plaintiffs except. It is further ordered that said amended bill be filed within ten days thereafter.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards the following amended complaint was filed in the office of the clerk of the circuit court:

86 In the circuit court of the State of Oregon, for Multnomah County.

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFEND.

Amended bill engrossed, made the order sustaining the demurrer, and ordering the plaintiff to elect, &c.

The plaintiffs represent to the court that they are the owners and in possession of lots Nos. one, (1,) two, (2), and four, (4,) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known and designated upon the map of said city; and that they, and those under whom they claim, have been in the peaceable possession thereof since the 13th day of December, 1849, and have made large and valuable improvements thereon, of which the said defendant has at all times had notice. The plaintiffs further represent, that such proceedings, according to law, in the office of the register and receiver of the land-office at Oregon City, Oregon, and in the Land Department of the United States, were had, as that, on the 7th day of December, 1860, a patent from the United States was duly issued to the corporate authorities of the said city of Portland, in trust for the benefit of occupants of town lots in said city, as therein set forth, for the following tracts of the public lands of the United States, to wit.: The S. ½ of the S. W. ¼, and river lot No. 8, in section 34, in T. 1 N., R. 1 E.; and river lots Nos. 5 and 6—the W. ½ of the N. W. ¼, and the N. W. ¼ of the S. W. ¼ of sec. 3, in T. 1 S., R. 1 E., all of which will more fully and at large appear by said patent, a copy whereof is herewith filed and made a part of this amended complaint, marked "A;" that the tract of land so entered, as aforesaid, are situate within the corporate limits of said city, and embrace the said lots hereinbefore described; that the said plaintiffs, and those under whom they claim, have been occupants of said lots since the 13th day of December, 1849, and that they are entitled to the benefits of the said city entry and patent aforesaid; but that the legislature of the State of Oregon, at the time of the commencement of this said, had passed no law whereby the trust reposed as aforesaid, in the said corporate authorities, could be caused into execution.

87 The said plaintiffs further represent that said defendant claims title to a certain tract of said land hereinafter described, embracing said lots, and sets up said title in virtue of an alleged patent from the United States to himself, bearing date the 8th day of December, 1860, a copy whereof, marked "B," is herewith filed and made a part of this complaint.

That said alleged patent purports to be issued and based upon donation certificate No. 69, a copy whereof is herewith filed, marked "C," and made a part of this complaint.

The plaintiffs shew to the court that said certificate No. 69 contains a clause to the effect that Benjamin Stark having proven to the satisfaction of the surveyor-general of Oregon the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date of said certificate, and having, in pursuance of the 7th section of the act of the 27th September, 1850, creating the office of the said surveyor-general, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section of said act: Now, the plaintiffs allege that the said Benjamin Stark, contriving and intending to circumvent and defraud the plaintiffs and other occupants, as aforesaid, and who were the owners of large and valuable improvements upon said lots and elsewhere upon the said tracts so claimed by him as aforesaid, under said alleged patent, and more particularly intending to deceive and defraud the plaintiffs out the property in the complaint mentioned, falsely and fraudulently procured it to be established and proven before and to the satisfaction of the said surveyor-general of Oregon, settlement and cultivation, as in and by said certificate and patent is alleged, the said defendant well knowing, as plaintiffs allege, the fact to be that at the date of said certificate he had not com-

menced his residence and cultivation within the boundaries of and upon said tracts on or prior to the said first day of September, 1849, and had not prior to the date of said certificate, continuously, for four years, resided upon and cultivated said tract as by the 4th section of said act it is required.

The plaintiffs further says that the said alleged patent to the said defendant contains a reservation in favor of occupants of town lots
88 under said city entry and patent, which will more fully appear on reference thereto; and that the said defendant well knew of said reservation before and at the date of said alleged patent, accepted and procured said patent and reservation of, and preventing and pretending it to place the effect of ratifying and confirming the title of occupants of said lots, and more especially that of the plaintiffs, held and improved as aforesaid, whereby the plaintiffs have been induced to rest quietly, without suspicion of the intent of the defendant to deprive them of the said property; but now, so it is, the said defendant not only refuses to recognize and confirm—to allow said reservation, their title to said property—but, as claiming the same by virtue of said patent, and is threatening to sue the plaintiffs for the possession of said property, and denies their right to the same under the said city entry and patent, or the reservations in said defendant's patent contained, whereby the plaintiffs' right and title to said property is greatly clouded and their peace and quiet of possession disturbed and jeopardized. The plaintiffs therefore pray that the said patent, so wrongfully obtained, may be set aside and held for naught; or, if the said patent shall appear to have been legal and binding, that, in virtue of the reservations therein contained, for the benefit of occupants of town lots, and amongst whom are the plaintiffs, the defendant may be decreed to release to these plaintiffs all his right and title to said lots and forever enjoined from proceeding at law to recover the possession thereof, or otherwise disturbing the plaintiffs in the quiet and peaceable possession; and that plaintiffs have such other relief as to equity appertains.

CHAPMAN,
Atty. for Plffs.

STATE OF OREGON,
Multnomah County, ss:

On this 30th day of October, 1864, A. M. Starr, one of the plaintiffs in the foregoing case, being sworn, on oath says the statements in the foregoing complaint are true, as he verily believes.

A. M. STARR.

Subscribed and sworn to before me, the undersigned, this 30th October, 1864.

LEVI ANDERSON,
Justice of the Peace, North Portland Precinct.

89 EXHIBIT A.

CERTIFICATE No. 19.]

The United States of America to all to whom these presents shall come, greeting:

Whereas the corporate authorities of the city of Portland, in Multnomah County, Oregon, in trust for the several use and benefit of the occupants thereof, according to their respective interests, under the town-site act of Congress, approved 23rd May, 1844, entitled "An act

for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," have deposited in the General Land-Office of the United States a certificate of the register of the land-office at Oregon City, whereby it appears that full payment has been made by the said corporate authority of the city of Portland, and intent, as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the S. ½ of the S. W. ¼, and river lot No. 8, of section thirty-four, in township one north of range one east; river lots numbers five and six; the west half of the northwest quarter, and the northwest quarter, and the northwest quarter of the southwest quarter of section three, in township one south, of range one east, in the district of lands subject to sale at Oregon City, containing three hundred and seven acres and forty-nine-hundredths of an acre, subject, however, to the decision of the Commissioner of the General Land-Office, of 18th October, 1858, expressly reserving any valid claims which may exist in virtue of the several donations: Of Benjamin Stark, certificate No. 69; Daniel H. Lownsdale, certificate No. 1022; William W. Chapman's certificate No. 6; and Stephen Coffin's certificate No. 67, according to the official plat of the survey of the said lands returned to the General Land-Office by the surveyor-general, which said tracts have been purchased by the corporate authorities of the city of Portland, and in trust as aforesaid: Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided, have given and granted, and by these presents do give and grant unto the said corporate
90 authority of the said city of Portland in trust for the several use and benefit of the occupants thereof, according to their several intents under said act of 23d of May, 1844, and to their successors and assigns in trust, as aforesaid, the said tracts above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said corporate authorities of the city of Portland, in trust for the several use and benefit of the occupants thereof, according to their respective interests under said act of 23d May, 1844, and to their successors and assigns in trust as aforesaid, subject to the conditions and reservations herein expressed.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington the seventh day of December, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fifth.

By the President,

[SEAL.]

JAMES BUCHANAN,
By J. B. LEONARD, *Sec'y.*
J. N. GRANGER,
Recorder of the General Land-Office.

Recorded vol. 1, page 1 E.
Received for rec. Sep. 12, 1862.

EXHIBIT B.

The United States of America to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land-Office of the United States a certificate numbered sixty-nine of the surveyor-general

of the public lands in Oregon, whereby it appears that under the provisions of the act of Congress approved the 27th day of September, 1850, entitled "And act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," the claim of Benjamin Stark, of Oregon, notification No. 328, has been established to a donation of one-half section or 320 acres of land and that the same
91 has been surveyed and designated as claim No. 45, being parts of sections 33 and 34, in township one north of range one east, and claim No. 47, being part of section 3 in township one south of range one east according to the official plat of survey returned to the General Land-Office by the surveyor-general, being bounded and described as follows, to wit: Beginning at a point sixteen chains and thirty-four links north of the southwest corner of section thirty-four, in township one north of range one east; thence south seventy degrees and fifteen minutes, east forty-seven chains and twenty-five links; thence north four degrees, east thirty-seven links; thence north twenty-five degrees, east five chains and forty-three links; thence north four degrees, east six chains and fifty-two links; thence north eleven degrees, east five chains and forty-two links; thence north eighty-nine degrees and ten minutes, west fifty-three chains and fifty-seven links; thence south seventy degrees and fifteen minutes, east five chains and sixty-four links to the place of beginning in the Willamette land-district, Oregon Territory, containg forty-eight acres and two-hundredth'.

[RESERVATION.]

And whereas it appears that the greater portion of this claim is covered by an entry made on the first day of February, 1858, by the corporate authorities of the city of Portland, which entry has been approved and will be patented to the said corporate authorities in trust for the several use and benefit of the occupants thereof according to their respective interests: Now know ye that the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, have given and granted, and by these presents do give and grant, unto the said Benjamin Stark the tract of land above described, subject to such rights as may exist in virtue of the aforesaid entry for the city of Portland; to have and to hold the aforesaid tract with the appurtenances unto the said Benjamin Stark, and to his heirs and assigns forever, subject, as aforesaid, to said entry for the city of Portland.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land-Office to be hereunto affixed.

92 Given under my hand at the city of Washington this 8th day of December, in the year of our Lord one thousand eight hundred sixty, and of the Independence of the United States the eighty-fifth.

By the President,

JAMES BUCHANAN,

[SEAL.] By J. B. LEONARD, *Sec'y.*

J. N. GRANGER,

Recorder Genl. Land-Office.

Recorded vol. 1, page 464.

C.

Donation certificate No. 69.] [Notification No. 328

Whereas, in conformity with the provisions of the 7th section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands of Oregon, and to provide for the survey, and to make donations to settlers of the public lands," Benjamin Stark, of the county of Washington, in the said Territory, claiming a donation right in virtue of the act aforesaid, to the following tract of the public lands, known and designated in the surveys and plats of the United States as the claim No. 45, being parts of sections 33 & 34, T. 1 N., R. 1 E., and claim No. 47, being part of section 3, T. 1 S., R. 1 E., particularly bounded and described as follows: Beginning at a point 16.34 chains north of the S. W. corner of section 34, T. 1 N., R. 1 E.;

Thence S. 70° 15′ E.—47.25 chains;
Thence N. 4° E.— 0.37 chains;
Thence N. 25° E.— 5.43 chains;
Thence N. 4° E.— 6.52 chains;
Thence N. 11° E.— 5,42 chains;
Thence N. 89° 70′ W.— 53.57 chains;
Thence S. 70° 15′ E.— 5.64 chains;

to the place of beginning, containing 48.02 acres, have proven, to the satisfaction of the surveyor-general of Oregon, the fact that such settlement was commenced on the first day of September, 1849, four years prior to the date hereof, and having, in pursuance of the requirements of the 7th section of the act aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation required by the 4th section:

93 Now, therefore, be it known that I, John B. Preston, surveyor-general of public lands in Oregon, do hereby and in pursuance of the 7th section of the act aforesaid certify to the Commissioner of the General Land-Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to the claimant for the tract of land described, as required by the 7th section of the act aforesaid; provided the said Commissioner shall find no valid objection thereto.

Given under my hand at the office of the surveyor-general of public lands in Oregon this tenth day of September, 1853.

JNO. B. PRESTON,
Surveyor-General of Public Lands in Oregon.

The following words and figures are indorsed upon the original: "Filed November 1, 1864. H. C. Coulson, clerk."

And afterwards the following was filed in said court aforesaid:

Motion for judgment.

In the circuit court of the State of Oregon, for Multnomah County.

A. M. & L. M. STARR, PL'FFS,
v.
BENJ. STARK, DEFENDANT.

The plaintiffs move the court for judgment for want of an answer.

CHAPMAN, *Att'y.*

Indorsed upon the foregoing are the words and figures following, to wit: "Filed Nov. 14, 1864. H. C. Coulson, clerk."

And afterwards the following was filed in said court aforesaid:

Demurrer.

In the circuit court of the State of Oregon, county of Multnomah.

A. M. & L. M. STARR
v.
BENJ. STARK, DEFENDANT.

The defendant demurs to the complaint, and for grounds of demurrer assigns:

94 That the same does not state any facts constituting a cause of action or ground for relief in equity.

2nd. Because there is no equity in the bill.

Nov. 8th, 1864.

GROVER & PAGE,
WAIT & KELLY,
For Defendant.

Indorsed upon the foregoing are the words and figures following, viz: "Filed Nov. 10, 1864. H. C. Coulson, clerk."

Be it remembered that at a term of the circuit court of the State of Oregon for the county of Multnomah, began and held at the court-house in the city of Portland, in said county, on Monday, the 14th day of November, A. D. 1864, among other the following proceedings were had, on Monday, November 21st, 1864, it being the 7th judicial day of said term, viz:

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Come the plaintiffs, by W. W. Chapman, their attorney; the defendant, by Grover & Page and Wait & Kelley, his attys.; and plaintiffs moved the court for judgment against said defendant for want of answer, which said motion reads as follows, to wit, (insert;) which said motion is overruled, and defendant has leave until Wednesday, 23d inst., to file answer herein; and defendant files demurrer to complaint, as follows, to wit, (insert.) which said demurrer the court overruled; to which ruling of the court defendant excepted. Journal No. 3, page 299.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And now comes the defendant and files his answer, in the words and figures following, to wit:

Answer to amen'd comp't.

In the circuit court of the State of Oregon for the county of Multnomah, ss:

A. M. & L. M. STARR, PLAINTIFFS,
v.
BENJAMIN STARK, DEFENDANT.
Answer.

The defendant, for answer to the amended complaint herein,

95 denies that the plaintiffs are the owners of lots numbered one, two, and four, in block numbered eighty-one, in the city of Portland, specified in the complaint; defendant denies that the plaintiffs, or

those under whom they claim, have been in the peaceable possession of said lots since the 13th day of December, 1849; defendant admits that the plaintiffs have been in possession of said lots for some time past, and that they have made large and valuable improvements upon some said lots, but he avers that the said improvements thereon have been held and made with full knowledge, on the part of the plaintiffs and all others, that the defendant was the owner thereof in fee-simple; defendant admits that a patent was issued to the city of Portland in the manner and form alleged, but denies that the same was issued according to law, or that the city of Portland holds said lands therein described in trust for the occupants of town-lots in said city; defendant denies that the said plaintiffs, or those under whom they claim, have been occupants of said lots since the 13th of December, 1849, and deny that they are entitled to the benefit of the said city entry or patent; defendant denies that he at any time contrived or intended to circumvent or defraud the plaintiffs or any occupants of lots in said city of Portland, as alleged or otherwise, or any person or persons who were the owners of large or valuable or any improvements upon the said lots alleged in the complaint or elsewhere upon the said tracts of land mentioned in the complaint; defendant denies that he intended to deceive or defraud the plaintiffs out of the property mentioned in the complaint, or that he falsely or fraudulently procured to be established and proved, before and to the satisfaction of the surveyor-general of Oregon, settlement and cultivation as in the certificate and patent alleged; defendant denies that he had not commenced his residence and cultivation within the boundaries of and upon said tracts of land in the certificate and patent and complaint described, on or prior to the first day of September, 1849; and denies that he had not, prior to the date of said certificate, continuously for four years resided upon and cultivated said tract, as by the fourth section of said act of Congress required; defendant denies that he accepted or received said patent with the intention of ratifying or confirming the title of occupants of said lots,
96 or of the plaintiffs, or held and improved by them or others, except as that they might hold or have improved under contracts under this defendant; defendant denies that plaintiffs have been induced to hold said lots, or improve the same, *without* or hold the same quietly, without suspicion of the intention of the defendant to deprive *of* them of the same. Wherefore defendant prays that he have a decree of this court dismissing said bill of complaint, and for his costs and disbursements, and for such other relief as is meet in equity and good conscience.

GROVER & PAGE,
WAIT & STRONG,
Defendant's Attorneys.

COUNTY OF MULTNOMAH, *ss:*

I, W. W. Page, being sworn, say that I am one of the defendant's attorneys, and that I verily believe the foregoing answer to be true, and that I make this verification because the defendant is not within this State.

W. W. PAGE.

Subscribed and sworn to before me Nov. 23, 1864.

H. C. COULSON, *Clerk.*

Indorsed upon the foregoing are the words and figures following, viz "Filed Nov. 23d, 1864. H. C. Coulson, clerk."

And now comes the plaintiffs' atty. and files the following, to wit:

Motion to close proofs.

STARRS
v.
STARK.

Plaintiffs move the court to order that proofs and depositions close in this case by or before the 25th day of December next.

CHAPMAN, *Att'y.*

NOV. 25TH, 1864.

Indorsed on the foregoing are the following: "Filed Nov. 24th, 1864. H. C. Coulson, clerk."

And now comes the plaintiffs' atty. and files the following, to wit:

Motion to strike out.

STARRS
v.
STARK. } Chy.

97 The sham moves the court to strike out as sham and irrelevant the following-designated portions of the defendant's answer:

On page 1, from and including the word "lots" in the 10th, to and including 13th line.

On page 2, from and including word "but" on the 15 line, to and including 18 line.

3d part of 21 and whole of 22 lines.

On page 2, from 22 to 28 line, inclusive.

On page 3, from line 2 to line 11, inclusive.

CHAPMAN, *Atty.*

Indorsed on the foregoing is the following: "Filed Nov. 23, 1864. H. C. Coulson, clerk."

And the following was also filed in said court aforesaid:

(This affidavit should appear before journal entry, page 337.)

In the circuit court of the State of Oregon for Multnomah County.

A. M. & L. M. STARR, PL'FFS,
v.
BENJAMIN STARK, DEFT.

A. M. Starr, one of the plaintiffs, being sworn, says that before the commencement of this suit, the plaintiffs had began the execution of a large building on said property in the bill mentioned, and had erected a stone wall as part of the foundation of a brick building; that they suspended work on account of the threats and grievances in the bill mentioned, and delay in the prosecution of the said work has been and will be of great injury to plffs.

A. M. STARR.

Subscribed and sworn to before me Nov. 25, 1864.

H. C. COULSON, *Clerk.*

Indorsed upon the foregoing is the following: "Filed Nov. 25, 1864 H. C. Coulson, clerk."

Be it remembered that at a term of the circuit court of the State of Oregon for the county of Multnomah, began and held at the court-

house, in the city of Portland, county aforesaid, on Monday, November 14th, 1864, among other the following proceedings were had, on Wednesday, November 30th, 1864, viz:

98 A. M. & L. M. STARR
v.
BENJAMIN STARK.

On this came the plaintiffs, by W. W. Chapman, their attorney, and the defendant, by Grover & Page and Wait & Kelley, and Strong, his attys.; and defendant files answer herein, as follows, to wit, (insert;) and plffs. moved the court for an order to close the taking of depositions by 25th December next—files motions and afdt.—as follows, to wit, (insert;) which said motion the court overruled: and pltf. filed motion to strike out part of answer, as follows, to wit, (insert;) which said motion the court sustained, and lines are drawn across the portion stricken out, and said motion, as to the remainder of the answer not stricken out, is overruled. (Journal No. 3, page 337.)

(Signed) ERASMUS D. SHATTUCK,
Judge.

And now comes the plaintiffs, by atty., and file the following:

Reply to answer.

In the circuit court of the State of Oregon for Multnomah County. In equity.

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFENDANT.

The plaintiffs, for replication to said defendant's answer, or so much as they are advised to reply unto, say that, as to so much of defendant's answer as avers that said improvements thereon (on said lots) have been held and made with full knowledge, on the part of the plaintiffs and all others, that the defendant was the owner thereof, in fee-simple; that the same is untrue.

CHAPMAN, *Atty.*

STATE OF OREGON,
Multnomah County, ss:

On this 3d day of December, 1864, A. M. Starr, being sworn, says the statements in the foregoing replication are true, as he verily believes.

A. M. STARR.

Subscribed and sworn to before me Dec. 3rd, 1864.
H. C. COULSON, *Clerk.*

Indorsed upon the foregoing is the following: "Filed Dec. 3, 1864. H. C. Coulson, clerk."

99 *Affidavit for continuance.—W. W. Page.*

In the circuit court of the State of Oregon for the county of Multnomah.

A. M. & L. M. STARR, PLFFS.,
v.
BENJ. STARK, DEFENDANT.

COUNTY OF MULTNOMAH:

I, W. W. Page, being sworn, say that I am one of the defendant's attorneys, and that the defendant is now absent from this State, and is

sojourning with his family in the State of Connecticut, and I verily believe that the testimony of the defendant is material on the trial of the above-entitled suit; and I further swear that, since the filing of the amended bill of complaint herein, on the first of November, 1864, I have not been able to have any communication with the defendant or hear from him, except by telegraph and the receipt of a letter dated January 12, 1865, about three days since; that by said letter (which affiant is willing to exhibit to the court) by some means the defendant appears not to have received any letters from this affiant in which I requested information as to the matters in issue in said suit, since the same was formed; and I further swear that the said letter is, as I believe, in answer to a telegraphic dispatch sent to defendant requesting his immediate departure for Oregon, which was sent early in the month of January last, and I am informed and believe that the defendant was detained in the Atlantic States by reason of the sickness of deft.'s brother, who has, within a few past, died; and I verily believe that the said Benj. Stark is making every preparation in his business to return to Oregon, and will return in the month of April next; and I verily believe that the said Stark will testify that from the year 1846 up to this time he has made Portland, Oregon, his home, and that he has not been absent during that time, excepting on business and temporarily, and more particularly in the year 1849; that he made Oregon his home, and residence on the tract of land including the lots in dispute, and was not absent excepting temporarily on business, and that while so absent he left large amounts of personal property on his donation claim, and also an agent to look after and manage the same; and I further that I do not know, and am not advised of any other witness or witnesses by whom I can prove the same facts so fully; and this application is not made for delay, but that justice may be done.

W. W. PAGE.

Subscribed and sworn to before me Feby. 21st, 1865.

H. C. COULSON, *Clerk*.

Indorsed upon the foregoing is the following: "Filed Feb'y 21, 1865. H. C. Coulson, clerk."

And the following affidavit was filed in said court aforesaid:

Affidavit for continuance.—W. S. Ladd.

In the circuit court of the State of Oregon for the county of Multnomah, ss:

A. M. & L. M. STARR, PLFFS.,
v.
BENJAMIN STARK, DEFENDANT.

I, W. S. Ladd, being sworn, say that heretofore, about the first day of January last, at the instance of the defendant's attorneys, I caused a telegram to be sent to said deft., requesting that he should come immediately to Oregon, concerning the above-entitled suit, and from answers thereto and from letters since received from him, Stark, I verily believe that the said Stark would have been in Oregon at the commencement of this term of said court but that he was detained by the sickness of his brother, who has recently died; and I verily believe, from my ad-

vices from him, that he will be here before the next June term of this court; and I further swear that I have written to him, as also telegraphed to him, to come to Oregon, at the instance of his attorneys herein, who advised me that his personal presence was necessary, and that his testimony was also absolutely necessary; and I further swear that I believe said Stark was detained as aforesaid, and expected to have been here before the commencement of this term of the court..

W. S. LADD.

Subscribed and sworn to before me this 21st day of February, 1865. Witness my hand and notarial seal.

[SEAL.]

S. A. MORELAND,
Notary Public, State Oregon.

Indorsed upon the foregoing is the following: "Filed Feb'y 21, 1865. H. C. Coulson, clerk."

And the following was also filed in the court aforesaid:

101 *Affidavit for continuance.—Wm. Cree.*

Circuit court of the State of Oregon for the county of Multnomah.

A. M. & L. M. STARR
v.
BENJ. STARK.

STATE OF OREGON,
County of Multnomah:

I, William Cree, being sworn, say that I have received a letter from Benjamin Stark, and verily believe from said letter, as well as from other letters to Capt. Molthrop's family, that the said Stark has been detained in the Eastern States by the sickness of his brother, who has recently died; and I verily believe that said Stark will be here before the next June term of said circuit court.

WM. CREE.

Subscribed and sworn to before me this 21st day of February, A. D. 1865.

[SEAL.]

BENJ. F. GOODWIN,
Notary Public, Oregon.

[U. S. r. stamp, 5 cts., canceled.]

Indorsed upon the foregoing is the following: "Filed Feb'y 21, 1865. H. C. Coulson, clerk."

Be it remembered that at a term of the circuit court of the State of Oregon for the county of Multnomah, began and held at the court-house in the city of Portland, in said county, on Monday, the thirteenth (13th) day of February, A. D. 1865, the Hon. Erasmus D. Shattuck, sole judge, among other the following proceedings were had on Wednesday, February 27, 1865—the 13th judicial day of said term—to wit:

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Come the plaintiffs, by Chapman & Holbrook, their attorneys, and the defendant, by Grover & Page, and Wait & Kelley, and Strong, his attys., and defendant, by his said attys., move' the court for continuance of this cause, and files motion and affidavit as follows, to wit, (insert.)

Thereupon it is ordered by the court that this cause be, and
102 is hereby, continued until May special term of this court, with leave to take proofs. (Journal No. 3, page 424.)

(Signed) ERASMUS D. SHATTUCK,
Judge.

And now comes plaintiffs, by their attys., and file the following in said court:

In the circuit court of the State of Oregon for Multnomah County.

A. M. & L. M. STARR, PLFFS.,
v.
BENJ. STARK, DEFT.

The plaintiff, by W. W. Chapman & A. Holbrook, his attorneys, moves the court to strike out all of defendant's depositions and parts of depositions excepted to by the plaintiff.

CHAPMAN & HOLBROOK,
Plffs.' Attys.

Indorsed upon the foregoing is the following: "Filed May 9th, 1865 H. C. Coulson, clerk."

And afterwards the following was filed in said court, viz:

In the circuit court of Oregon for Multnomah County.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

The plaintiffs move the court to exclude the exhibits this day filed, marked ("9 exhibits,") because the same are irrelevant, immaterial, and not the best evidence, and not properly certified.

W. W. CHAPMAN, A. HOLBROOK,
Plffs.' Attys.

Indorsed upon the foregoing is the following: "Filed May 9, 1865. H. C. Coulson, clerk."

NOTE.—The ("9 exhibits") referred to in the above motion as "this day filed" are not among the files.

J. W. DAVIS,
Copyist.

And afterwards the following was filed in said court, to wit:

103 *Motion to suppress documents.*

In the circuit court of the State of Oregon for the county of Multnomah, ss:

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Defendant moves to suppress the documents filed herein as evidence attached to which is the certificate of H. C. Coulson, county clerk—

1st. Because each of said documents are immaterial and irrelevant.

2nd. Because none of the same are properly proven or authenticated so as to be admitted in evidence.

3rd. Because none of the acts of Sherman or Griffin are properly shown to be done with authority from the defendant.

WAIT, GROVER, PAGE & STRONG,
For Defendant Stark.

Indorsed upon the foregoing is the following: Filed May 10, 1865. H. C. Coulson, clerk.

Be it remembered that at a special term of the circuit court *court* of the State of Oregon, for the county of Multnomah, begun and held at the court-house, in city of Portland, in said county, on Monday, the eighth day of May, A. D. 1865, among other the following proceedings were had on Friday, May 12th, 1865, the Hon. Erasmus D. Shattuck, sole judge, presiding, that is to say:

A. M. & L. M. STARR
v.
BENJAMIN SATRK.

Come the plaintiffs, by Chapman & Holbrook, their attys., and the defendants, Waite, Kelly, Grover, Page & Strong, his attys.; and defendant gave notice of filing certified copies of notification, &c., (9 papers,) to the filing of which exhibits plaintiffs, by their said attys., objected, and plaintiff moved the court to suppress parts of depositions taken and filed in the cause by defendant, which said motion reads as follows, to wit, (insert:) and defendant gave notice that defendant would read part of original complaint in this cause as evidence, and plaintiffs gave notice that they would read original records from
104 Washington County, of which copies are filed herein, and by agreement of parties this cause is set for trial May 25th, 1865, with leave given to both parties to take proofs and file exhibits until that time. (Journal No. 3, page 484.)

(Signed) ERASMUS D. SHATTUCK,
Judge.

And now comes the defendant's attorney and files the following, viz:

Affidavit of Wm. Strong.

In the circuit court for the State of Oregon for the county of Multnomah.

A. M. & L. M. STARR, PLFF.,
v.
BENJN. STARK, DEFENDANT.

Wm. Strong, one of the attorneys for the defendant, being duly sworn, says that Benjamin Stark, the defendant in the above-entitled cause, is a material witness in his own behalf; that he is advised by said Stark and believes that he will testify that from the 1st day of September, 1849, until long after the 10th day of September, 1860, he was a resident upon the tract of land described as his donation claim in the pleadings in this case, embracing the lands in controversy; that all of his absences from said residence during the period aforesaid were temporary, and that during such absences he always entertained a fixed intention to return, and never intended to abandon such residence. And affiant is further advised that he, said Stark, will testify that he called the

attention of his attorney to a description of his residence, (stating it to be in San Francisco,) which is contained in a power of attorney given by him to George Sherman; and that at that time he informed his attorney that is was a misdescription, when he was told by said attorney that it was a matter of no account, amounting, at most, only to the fact that he was then present in San Francisco.

WM. STRONG.

Subscribed to and sworn to before me May 25th, 1865.

H. C. COULSON, *Clerk.*

Indorsed upon the foregoing is the following: Filed May 25, 1865. H. C. Coulson, clerk.

And afterwards, to wit, at the aforesaid May special term of the circuit court, 1865, among other the following proceedings were had, viz:

105 Special term, seventh day.—Thursday, May 25th, 1865.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Come the plaintiffs, by Chapman & Holbrook, their attorneys, and the defendant appearing by Grover & Page, and Wait & Kelly and Strong, his attys.; and defendant, by his said attys., moves the court for continuance of this cause, and files affidavit and motion as follows, to wit: (insert,) which said motion for continuance the court overruled, and the parties, being ready for trial, and the court having heard a part of the allegations and proofs in this cause, the same is continued until to-morrow morning at ten o'clock. Journal No. 3, page 493.

(Signed) ———, *Judge.*

And afterwards the following journal-entry was made, viz:

Special term, eighth day.—Friday morning, ten o'clock, May 26, 1865.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Come the parties, by their respective attorneys, as heretofore; and the court having heard the conclusions of the proofs, this cause is continued until to-morrow morning at ten o'clock. Journal No. 3, page 493.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

And afterwards the following journal-entry was made in this cause, viz:

Special term, ninth day.—Saturday morning, ten o'clock, May 27th, 1865.

A. M. & L. M. STARR
v.
BENJAMIN STARK.

Come the parties, by their respective attorneys, as heretofore; and the court, after hearing the argument of counsel, this cause is taken under consideration, and decision herein reserved. Journal No. 3, page 494.

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Be it remembered that at a term of the circuit court of the State of Oregon, for the county of Multnomah, began and held at the court-
106 house, in the city of Portland, in said county, on Monday, the 12th day of June, 1865, the Hon. Erasmus D. Shattuck, sole judge, among other the following proceedings were had, to wit:

June term, 1865; first day.—Monday, June 12th, 1865.

A. M. & L. M. STARR }
v.
BENJAMIN STARK. }

This cause having been heard at the May special term of this court upon the engrossed amended complaint, answer, replication, exhibits, and proofs, and having been argued by counsel on both sides, and the decision reserved by the court, now, at this day, the court being sufficiently advised in the premises, and because it appears to the satisfaction of the court that the plaintiffs are entitled to the relief prayed for by them, it is ordered, adjudged, and decreed by the court that the patent under which it is alleged the defendant claims title to the premises in dispute, dated the 8th of December, 1860, copy of which is exhibited with the complaint, be, and the same is declared as against the plaintiffs, void, and to be taken for naught; and that the defendant, and all others claiming under, through, or by him, be, and they are, perpetually enjoined and prohibited from ejecting and turning out, and from commencing any suit to eject and turn the said plaintiffs, their heirs or assigns, out of the possession of the parcels of land described in the complaint, being lots numbers one, (1,) two, (2,) and four, (4,) in block number eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known and designated upon the map of said city, or any part thereof. It is further ordered and adjudged that the defendant pay the costs and disbursements herein made, and that execution issue therefor, to which order and decision of the court defendant, by his said attorneys, excepted. (Journal No. 3, page 501.)

(Signed) ERASMUS D. SHATTUCK, *Judge.*

Be it remembered that the following was filed in the office of the clerk of the circuit court of Oregon, for Multnomah County, in said cause, to wit:

107 In the circuit court of the State of Oregon, for the county of Multnomah. In chancery.

A. M. & L. M. STARR, RESPONDENTS, }
v.
BENJAMIN STARK, APPELLANT. }

To A. M. & L. M. Starr, respondents, and H. C. Coulson, clerk of said court:

Take notice that Benjamin Stark, appellant, appeals to the supreme court of the State of Oregon from the whole decree entered in the circuit court of the State of Oregon, for the county of Multnomah, on the 12th day of June, A. D. 1865, at the last regular June term of said circuit court, in favor of the said A. M. & L. M. Starr, against the said Benjamin Stark, for one hundred and eighty-one and 40-100 dollars costs, and delivering the title to lots one, two, and four, in block eighty-one, in the city of Portland, in said county.

STATE OF OREGON, *Multnomah County, ss:*

I, Aaron E. Wait, one of the attorneys of the said Benjamin Stark in said suit, in said circuit court, do hereby certify that I have examined the rulings, orders, and decree in said suit, and that they are substantially erroneous in the following particulars, to wit:

1st. The court erred in overruling the application of the defendant to order the certifying of said suit to the United States circuit court for the district of Oregon.

2nd. The court erred in overruling the demurrer to the amended engrossed bill.

3rd. The court erred in striking out that part of the defendant's answer to the plaintiffs' amended engrossed complaint, beginning with the word "but" in the 2nd line of the 3rd page of said answer, and ending with the word "defendant" in the 11th line of said page.

4th. The court erred in its finding of facts.

5th. The court erred in its conclusions of law.

6th. The court erred in decreeing the patent of the defendant to be void, as to the premises in controversy, and as to the plaintiffs and those claiming under them.

7th. The court erred in finding and in decreeing that the plaint-
108 iffs were entitled to the premises in controversy, as alleged in their amended engrossed bill of complaint.

8th. The court erred in decreeing that the defendant be enjoined from putting the plaintiffs out of the possession of said premises, and from instituting suit for that purpose.

9th. The court erred in not dismissing said amended engrossed complaint, with costs and disbursements against the plaintiffs.

10th. The court erred in making any final decree in said suit against the defendant therein.

AARON E. WAIT.

Dated Portland, July 13th, 1865.

GROVER & PAGE AND STRONG AND
WAIT & KELLY,
Attys. for Appellant.

Indorsed upon the foregoing is the following, that is to say:

STATE OF OREGON, *County of Multnomah, ss:*

I hereby return that on this 14th day of July, 1865, I served the within notice upon the within-named A. M. Starr and L. M. Starr by delivering to them in person a true and correct copy of the same, at the city of Portland, in the county of Multnomah, in the State of Oregon.

JACOB STITZEL,
Sheriff of Multnomah County,
By F. M. ARNOLD,
Deputy Sheriff.

Fees, $3.20.
Dated Portland, July 14th, 1865.

And also indorsed upon the foregoing are the words and figures following, to wit: Filed July 15th, 1865. H. C. Coulson, clerk.

And also the following was filed in the office of the clerk of the circuit court of the State of Oregon, for Multnomah County, to wit:

In the circuit court of the State of Oregon, for the county of Multnomah.

A. M. STARR & L. M. STARR, RESPONDENTS,
v.
BENJAMIN STARK, APPELLANT.

Whereas the appellant has appealed from the judgment and decree rendered in the above-entitled suit to the supreme court of the
109 State, now, therefore, we, Benjamin Stark, appellant, and William Cree, surety, undertake and agree that the appellant will pay all damages, costs, and disbursements which may be awarded against him on the appeal; and if the judgment or decree, or any part thereof, be affirmed, the appellant will satisfy it so far as affirmed.

BENJ. STARK,
By W. S. LADD,
His Atty. in Fact.
WM. CREE.

COUNTY OF MULTNOMAH, *ss:*

I, William Cree, being sworn, say that I am a resident and freeholder within the State of Oregon, and that I am worth the sum of one thousand dollars over and above all debts and liabilities, and property exempt from execution.

WM. CREE.

Subscribed and swo'n to before me this 14th day of July, 1865. Witness my hand and notarial seal.

[SEAL.] BENJ. F. GOODWIN,
Notary Public, Oregon.

Indorsed upon the foregoing are the words and figures following, to wit: Filed July 15, 1865. H. C. Coulson, clerk.

Circuit court of the State of Oregon, for Multnomah County.

December term, 1868; twenty-ninth day.—Wednesday, December 23, 1868.

At this day the following mandate is filed with the clerk of this court from the supreme court of the State of Oregon, for record in the cause hereinafter named, to wit:

At a term of the supreme court, began and held the court-house in the city of Salem, in and for the State of Oregon, on Monday, the 7th day of September, in the year one thousand eight hundred and sixty-eight, the following proceedings were had: Present, the Hons. R. P. Boise, chief-justice; P. P. Prim, J. G. Wilson, and W. W. Upton, associate justices.

110 Wednesday—the thirtieth day.

A. M. STARR & L. M. STARR, RESPONDENTS,
v.
BENJAMIN STARK, APPELLANT.

Now, this day, came William Strong, attorney for the appellant, and moved the court that the mandate of the Supreme

Court of the United States, on the writ of error heretofore sued out in this case by the appellant, be entered upon the record of this court, which said mandate appearing, on inspection by the court, to be in all respects regular, said motion is allowed. It is hereby ordered to be spread upon the record, and reads as follows:

ADDISON M. STARR & LEWIS M. STARR, respondents,
v.
BENJAMIN STARK, APPELLANT.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Oregon, greeting:

Whereas lately, in the supreme court of the State of Oregon, before you, or some of you, in a case between Addison M. Starr and Lewis M. Starr, respondents, and Benjamin Stark, appellant, the decree entered by the said supreme court is in the following words, viz:

It is therefore ordered, adjudged and decreed that the judgment and decree herein, in the court below rendered, be in all things affirmed. It is further ordered, adjudged, and decreed that the patent under which it is alleged that the appellant claims title to the premises in dispute, dated the eighth of December, 1860, a copy of which is exhibited with the complaint, be, and the same is hereby declared, as against the respondents, void and to be taken for naught, and that the appellant and all others claiming under him be, and they are hereby, perpetually enjoined and prohibited from ejecting and turning out and from commencing any suit to eject and turn the respondents, their heirs or assigns, out of the possession of the parcels of land described in the complaint, being lots Nos. one, (1,) two, (2,) and four, (4,) in block No. eighty-one, (81,) in the city of Portland, Multnomah County, Oregon, as known and designated on the map of said city, or any part thereof; and that the respondents have and recover of
111 and against Wm. Cree, surety in appeal, the sum of two hundred and eighty dollars and seventy cents, costs and disbursements in the court below, and the further sum of twenty-nine and 50-100 dollars, costs and disbursements in this court allowed, and that the cause be remanded to the court below for further proceedings herein, as by law provided in accordance with this decree, as by the inspection of the transcript of the said decree of the supreme court of the State of Oregon, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appear; and whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-seven, the said cause came on to be heard before the Supreme Court of the United States, on the said transcript of the record, and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed, with costs, and that the defendant and appellant, Benjamin Stark, recover against the said plaintiffs and respondents, Addison M. Starr and Lewis M. Starr, two hundred and eighty dollars and six cents, for his costs herein expended, and have execution therefor; and it is further ordered that this cause be remanded to the said Supreme Court with instructions to enter decree directing the

circuit court for the county of Multnomah to dismiss the suit; and the same is hereby remanded to you, the said judges of the Supreme Court, in order that such execution and further proceedings may be had in the said cause in conformity to the judgment and decree in this court above stated as, according to right and justice and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the honorable Salmon P. Chase, Chief-Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Wherefore, it is further, in obedience to said mandate, ordered, adjudged, and decreed that the decree heretofore rendered in the
112 above-entitled suit in this court, affirming the decree of the circuit court of Multnomah County, be, and the same is hereby, reversed; and it is further ordered, adjudged, and decreed that the decree heretofore rendered in the said circuit court be, and the same is hereby, reversed; and it is further ordered, adjudged, and decreed that the respondents, Addison M. Starr and Lewis M. Starr, take nothing by their said complaint, and that the said appellant, Benjamin Stark, have and recover against the respondents his costs and disbursements in the circuit court aforesaid, in this supreme court, and the further sum of two hundred and eighty dollars and six cents for his costs in the Supreme Court of the United States, and that a mandate issue to said circuit court for the execution of this decree. Appellant's costs in this court, for this term, taxed at 23 75-100 dollars.

STATE OF OREGON,
County of Marion, ss:

I, R. Williams, clerk of the supreme court of the State of Oregon, do hereby certify that the foregoing transcript has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and in my office.

Witness my hand and the seal of said supreme court affixed, at Salem, Oregon, this 12th day of December, 1868.

[SUPREME COURT SEAL.] R. WILLIAMS, *Clerk*,
By P. L. WILLIS, *Deputy*.

To the circuit court of the State of Oregon, for the county of Multnomah:

You are hereby commanded that, of the above judgment-order of our supreme court, upon the records of your court, you cause proper entry to be made as of a judgment therein, and proceed therein to final determination and execution as to the said order of our supreme court, and to law and justice shall appertain.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Oregon, at Salem, the 12th day of December, 1868.

[SUPREME COURT SEAL.] R. WILLIAMS, *Clerk*,
By P. L. WILLIS, *D.*

113 STATE OF OREGON,
County of Multnomah, ss:

I, Benjamin L. Norden, clerk of the circuit court of the State of Oregon, for the county of Multnomah, do hereby certify that the foregoing transcript of the pleadings, proceedings, journal-entries, notice of appeal, assignment of errors, undertaking on appeal, mandate, final decree, and judgment-roll has been by me compared with the originals, and the same is a correct copy and transcript of the whole of such original pleadings, proceedings, journal-entries, notice of appeal, assignment of errors, undertaking on appeal, mandate, final decree, and judgment-roll in the suit wherein Addison M. Starr and Lewis M. Starr were plaintiffs and Benjamin Stark defendant, as the same appear on file and of record in my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office in said county, this 12th day of April, A. D. 1870.

[SEAL.] B. L. NORDEN, *Clerk.*

[5-cent stamp, canceled]

In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR, COMPLAINANT,
v.
BENJAMIN STARK, DEFENDANT. } In equity. No. .

LEWIS M. STARR, COMPLAINANT,
v.
BENJAMIN STARK, DEFENDANT. } In equity. No. .

CHARLES P. BACON ET AL., COMPLAINANTS,
v.
BENJAMIN STARK, DEFENDANT. } In equity.

It is hereby stipulated by and between the parties in each and all th above-entitled actions, or suits, by their attorneys and solicitors:

First. That Stephen Coffin, William W. Chapman, and Daniel H. Lownsdale are the same persons who, in March and April, 1850, claimed to be the proprietors of what is called, in the pleadings in the above-entitled cases, the Portland town-site claim; and that they each acquired title from the United States to a separate tract of land,
114 being portion of said Portland claim, under the act of the Congress of the United States entitled "Act act to create the office of surveyor of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public land," approved September 27, 1850, and that said title was acquired by the proof of a settlement commenced by said Stephen Coffin on the first day of November, 1850, and four years' continued personal residence and cultivation thereafter upon said land; and, by the said William W. Chapman, by virtue of a settlement commenced on the thirtieth day of June, 1850, and four years' continued personal residence and cultivation by him, upon said land, thereafter; and, by said Daniel H. Lownsdale, by virtue of a settlement commenced by him on the 22d day of September, 1848, and four years' continued personal residence and cultivation thereafter by him upon said land.

Second. That the lands so acquired by the said Stephen Coffin, Wil-

iam W. Chapman, and Daniel H. Lownsdale do not embrace the lands or property in controversy in any of the above-entitled suits or causes.

Third. That this stipulation shall and may be used in each of the above-entitled causes as proof of the facts therein stated, provided such facts are material under the pleadings and to the issues or any of them. This stipulation subject to all objections which may be made to the relevancy or materiality of the facts therein stated to the issues made by the pleadings.

MITCHELL & DOLPH,
Solrs. for Complainants.
WM. STRONG,
Solr. for Defendant.

In the United States circuit court for the district of Oregon. In equity.

2 con.

LEWIS M. STARR
v.
BENJAMIN STARK.

Deposition of Lewis M. Starr, taken before Ralph Wilcox, examiner of said court, at Portland, in said district, on the 2d day of October, 1871, and days following, in pursuance of notice on behalf of the complainant, and to be read upon the trial of the above-entitled cause.

115 W. W. Chapman appearing for the complainant.
William Strong appearing for the defendant.

LEWIS M. STARR, being duly sworn, testifies as follows:

Question 1. State your name, age, and residence.

Answer. L. M. Starr; age, forty-six; residence, Portland, Oregon.

2. State how long you have resided in Portland.

Ans. Twenty-one years yesterday; since October 1st, 1850.

3. State whether you are acquainted with Stephen Coffin Daniel H. Lownsdale, W. W. Chapman, and Benjamin Stark.

Ans. Yes, sir; all of them.

4. State when you became acquainted with them severally.

Ans. With W. W. Chapman and Stephen Coffin and D. H. Lownsdale in the fall of 1850 or winter following; with Stark some time in 1851, I think.

5. State whether you are acquainted with the Portland land-claim; and, if so, when you became acquainted with it.

Ans. I am; first in the fall of 1850.

6. State whether you are acquainted with fractional block eighty-one in the city of Portland; and, if so, when did you first become acquainted with it, and who was in possession of it, and under what circumstances did you become so acquainted with it?

Ans. I became acquainted with it in the fall of 1850. W. W. Chapman was in possession of it, as I understood. I purchased a half-lot in the block from him, and put a building on it and occupied it from that time on.

7. State, if you know, whether, at the time you become acquainted with block eighty-one, there were any improvements upon it. If so, what were they?

Ans. Yes, sir; there was; there was an old building on there, I think, occupied as a slaughter-house and warehouse.

8. You state that you purchased a half-lot of Chapman. Describe or designate it as near as you can.

Ans. The south half of lot two.

9. State when and to what extent you improved that half-lot.

Ans. We erected a frame building of one story, about twenty
116 by eighty feet. It was in the fall of 1850, I think in November, soon after I came here.

10. Were you then acquainted with George Sherman?

Ans. No, sir.

11. Did you ever know him; and, if so, when?

(Objected to as immaterial.)

Ans. I think in the spring or summer of 1851 I got acquainted with him and knew him.

12. State, if you know, when Sherman came to Portland.

(Same objection.)

Ans. I don't know. I think he came here early in the spring of 1851.

13. State whether you are acquainted with Jackson Powell, and when you first became acquainted with him.

Ans. I am acquainted with him; I don't recollect the exact time I got acquainted with him.

14. How did you occupy the lot which you say you purchased of Chapman?

Ans. Occupied it by living on it, and carrying on the stove and tin business.

15. To what time did you live upon that lot?

Ans. I think it was in the fall of 1853 or '54 that I moved up, as near as I recollect.

16. If you knew, state when the first improvement was made on lot three in that block, and by whom.

Ans. I think in the winter or spring of 1851, by a man by the name of Reed. I don't know his given name.

17. State, if you know, for whom and under what claim of title he made the improvement.

(Same objection as before.)

Ans. I think he made the improvement for himself.

18. Are you acquainted with J. W. Cleaver; and, if so, when did you first become acquainted with him?

Ans. I am. I think in the fall or winter of 1852 I became acquainted with him.

19. If you know, state when he first became interested in lot three.

(Objected to as immaterial.)

Ans. I think about 1854 he bought there. I can't say positive.

117 20. Did he ever occupy it in any way; if so, how long and in what manner, and what improvements did he put upon it?

Ans. He occupied it as a cabinet and chair factory. He put on some buildings for a shop and sales-room. I can't say how long he occupied it; I should think about six or eight years.

21. State, if you can, about what year it was he quit the possession of it.

Ans. I think in 1860 or 1861.

22. Do you know whether Jackson Powell put any improvements upon that lot; that is, lot three?

Ans. No; I do not.

23. State what kind of improvement Reed made on lot three.

(Objected to as immaterial.)

Ans. He put up a story-and-a-half house.

24. State, if you know, who occupied that house after Reed.
(Same objection.)
Ans. I think C. G. Birdseye occupied it as a liquor store.
25. State if you are acquainted with lots one and two in block eighty-one; and, if so, were they ever improved, and when, and to what extent?
(Objected to as before.)
Ans. I am. The north half of lot one was occupied, or a building put up for a warehouse, I think, some time in the spring or summer of 1851; the other lot was not built on for several years, I think in 1859.
26. State whether either or any part of them were enclosed any earlier.
Ans. I think the n ½ of lot one was fenced some time in 1851. I don't recollect about lot 2.
27. You state that you become acquainted with Benjamin Stark sometime in 1851. Did he then claim any interest in the Portland land-claim, as land claimant?
(Objected to as leading and irrelevant.)
Question withdrawn by complainant's counsel.
28. Did you ever learn anything of Benjamin Stark making claim to a part of the Portland land-claim; if so, when?
(Objected to as leading and irrelevant.)
Ans. I understood that he laid a claim to a portion of it in the winter of 1850; the old settlers told me that his claim did not amount to anything; was of no account.
118 (The latter part of answer objected to, as incompetent.)
That part of answer withdrawn by plaintiff's counsel.
29. How long did you know Benjamin Stark as the land claimant to a part of the Portland land-claim?
(Objected to as immaterial.)
Ans. I understood, from the winter of 1850 and 1851.
30. How early did you know Benjamin Stark to be a resident upon the Portland claim, or any part of it?
(Objected to as immaterial, and because there is better evidence.)
Ans. I think about 1855 or 1856, the first I knew of his residence.
31. State whether you ever had any conversation with Benjamin Stark about his making title to any of the lots upon the tract claimed by him.
(Objected to as irrelevant and immaterial.)
Ans. I have had several conversations with him about it.
32. State, as near as you can, how early you had such conversations with him, how long they were, and all that was said about it.
(Same objection as above.)
Ans. I had conversations with him as early as 1856, up to 1861, at different periods. He always said he was going to make the lot-holders a good title as soon as he got his patent. In regard to property on the levee, he always said I had as good a title to the property on the levee as anybody had to any of the property in the city.
33. Do you know, or do you remember when the land claimants, Stark and others, began to take steps before the surveyor-general with regard to obtaining title?
(Objected to as immaterial, and not the best evidence.)
Ans. I recollect the time very well, but I couldn't give the exact dates.
34. Are you acquainted with the tract that Stark claimed; and if so, does it embrace block 81?
Ans. I am; it embraces that block.

35. What was the understanding with lot-holders on that tract with reference to title, at the time that Stark and others were taking steps before the surveyor-general?

(Objected to as immaterial, and as asking for something impossible for the witness to answer.)

119 Ans. The understanding was, and I have heard Stark say repeatedly, that if lot-holders would go in and assist him in getting his title he would make their titles good when he got his patent, and it should not cost them a dollar.

(Objects to that part of answer which refers to what Stark said, as not being responsive to the question.)

36. Did Stark know, or what opportunities did he have to know of the improvements and occupancy of the lots in block eighty-one, from the time you first knew him until 1863?

(Objected to as immaterial.)

Ans. He knew from observation, and from talks with us about the improvements and title to that property.

37. State whether Stark ever made any objection to you prior to 1861, to your claim to the lots or to making you a title to them.

(Objected to as leading and immaterial.)

Ans. No, sir; he never made any objections; on the contrary he urged us to go on and put up brick buildings there. He said there should be no building below us on the levee. That should be left open. He told me so repeatedly.

(Object to all after the word "objection" as not responsive to the question.)

38. Have you any knowledge of an appeal case to the Supreme Court of the United States in respect to the levee, generally known as Parrish against Stephens and others? If you have, state whether Benjamin Stark had anything to do with that appeal.

(Objected to as immaterial and implying the existence of suit that has not been proved.)

Ans. I have some knowledge of it. He was to pay a portion of the expenses in defending that suit.

39. State, as near as you can, what persons in possession or claiming lots on block 81, took a part in taking that appeal and prosecuting it.

(Objected to as immaterial, not the best evidence, and as implying facts that have not been proved to exist.)

Ans. All the property-holders in that block agreed to pay a portion of the expense.

40. How do you know that all the persons claiming property on block eighty-one were to pay a part of the expenses?

(Objected to as immaterial.)

Ans. I heard them say so; they gave their word that they would do so.

(Objected to as incompetent.)

120 41. State whether J. W. Cleaver was a party willing to pay a part of such expenses.

(Objected to as immaterial.)

Ans. He was.

42. State, if you know, whether he, or any person for him, paid any part of such expenses.

(Same objection.)

Ans. I don't know whether he paid any or not.. My brother and me stood the whole brunt of the suit.

43. State whether Ben. Stark agreed to pay any part of the expenses.
(Same objection.)
Ans. He did several times.
Continued until to-morrow at 9 o'clock a. m.

TUESDAY, *October* 3, 1871—9 o'clock a. m.

Examination resumed; same counsel present.

44. Referring to the forty-third interrogatory, state whether Stark's agreement to pay part of the expenses of the appeal was before or after the appeal was taken.

Ans. He said so both before and after several times.

(Question and answer objected to as immaterial.)

45. State, if you can, whether Stark said anything prior to the appeal being taken, assigning any reason why you, as the owners of the property in block 81, should pay any part of the expenses of the appeal; if he did, state as near as you can what he said.

(Objected to as immaterial.)

Ans. He said the property-holders on the levee all had a good title to their property. There was no question but that we could finally beat the city in the suit. By all contributing to the expense of the suit it would be light on us all.

46. Did he say anything at that time what the result would be in reference to title to you lot-holders, if you should succeed in the appeal; if he did, what did he say?

(Objected to as immaterial and leading.)

Ans. He said that if we succeeded in beating the city, that he would have unquestionable title then.

47. Did he say anything as to who would obtain the title directly from the Government, or as to what effect gaining the suit in the Supreme Court would have upon him as land-claimant?

(Objected to as immaterial.)

Ans. I don't recollect exactly what he did say about that.

121 48. Did he ever say anything to you or in your presence as to his ability to make your title, if you should gain the suit in the Supreme Court; if he did, what did he say?

(Objected to as above, and leading.)

Ans. He said that if we gained the suit in the supreme court we would have an undisputed title; and, when he got his patent he would make us title, and it shouldn't cost us a cent.

49. State whether you and A. M. Starr were or were not interested together in business and property in Portland; and, if you were, when it began and when it ended.

Ans. We were, from 1850 to 1865.

50. Was you acquainted with a man by the name of George Sherman; if so, when did you first know him, what was his business, and if he had any office where was it?

(Objected to as immaterial.)

Ans. I was some acquainted with him, not very well; his office was on this block, very near where we are; he was acting as agent for Benjamin Stark; where we are is on block —. I think it was in the summer of 1851 when I first knew him.

51. State whether or not you saw him about in sight of your premises, and how frequently.

(Objected to as immaterial.)

Ans. I used to see him about very often when he was in the city.

52. State about how near his office was to your house upon block 81.
(Objected to as immaterial.)
Ans. Between 3 and 4 hundred feet.
53. State who paid the taxes and street assessments upon lot 3 from the time you purchased it.
(Objected to as immaterial.)
Ans. Me and my brother paid all taxes from the time we purchased it up to 1870.
54. State the time when Stark first signified his opposition to giving you title.
(Same objection.)
Ans. It was at the time he was appointed Senator of the United States; I think in 1860 or 1861.
55. Was it after or before he took his seat?
(Same objection.)
Ans. It was before.
122 56. Was it not after he was appointed to that office?
(Same objection, and as leading.)
Ans. It was after he was appointed.
57. State what you mean in saying it was before he took his seat.
(Same objection.)
Ans. I mean before he left here for Washington.
58. Had there been any difficulty or hard feelings grown up between you and him which gave rise to his opposition?
(Same objections.)
Ans. There was no hard feelings between me and him that I know of.
59. State whether A. M. Starr had any difficulty with Benjamin Stark, out of which this opposition arose; if so, had it any relation to the title to the property?
(Objected to as immaterial.)
Ans. Yes, sir, he did; yes, sir, it did have relation to the title to the property.
60. What was the quarrel about?
(Same objection.)
Ans. After Stark's appointment as United States Senator my brother made affidavit in regard to what he had said in our office as to Stark's loyalty. Stark got very mad to think he should make such an affidavit, and said that he would make us pay damn dear, or something to that effect, before we got a title to this property—would make us pay damn dear for it.
(Objected to as not being responsive to the question, and not the best evidence.)
61. State whether Stark had ever, before the time and circumstances referred to in your last answer, objected to making title, or given you any notice upon that subject.
(Objected to as irrelevant.)
Ans. He never did. On the contrary, he offered to make us a deed at any time; but we thought we had better wait until he got his patent.
62. State whether you were ever in possession of the south half of lot 4 in block 81.
(Same objection.)
Ans. Yes, sir.
63. When did you first obtain possession of that half-lot?
(Same objection.)
Ans. Some time in 1856—August, 1856.

123 64. Who was in possession of it prior to your obtaining it ?
(Same objection.)
Ans. Jackson Powell ; he owned the lot.
65. How long had he been in possession ?
(Same objection.)
Ans. Since November, 1850.
66. Did you purchase the south half of lot 4 of Powell ; and, if so, how much did you pay for it ?
(Objected to as immaterial and leading.)
Ans. Yes, sir. I purchased the whole lot of him, and paid him $1,000, I think.

Cross-examination by Wm. Strong :

Question 1. You stated in your answer to the 6 interrogatory that you became acquainted with block 81 in the fall of 1850, and that W. W. Chapman was in possession of it as you understood ; from what did you understand it ?
Answer. By his measuring it off, and placing us in the possession of it.
2. Did he place you in possession of the whole block ?
Ans. No, sir ; not at that time.
3. Did he place you in possession of any but the ½-lot that you purchased of him ?
Ans. That is all.
4. How did he place you in possession of that half-lot ?
Ans. By going over and measuring it off and telling us where to build.
5. Was he at that time living upon the lot ?
Ans. No, sir.
6. Did he have it enclosed or have any buildings upon it ?
Ans. I think not at that time.
7. Was he at that time in the actual personal occupation of any building or enclosure upon the block ?
Ans. I think he was ; he had an enclosure on lots 3 and 4.
8. What was he using lots 3 and 4, or that enclosure, for ?
Ans. I think on lot 3 he had an old building he used for a slaughter-house or warehouse ; on lot 4, an enclosure he used for a yard for cattle or horses.
9. Do you mean to be understood that he was personally engaged in carrying on the butcher business upon those lots ?
Ans. No, sir.
124 10. How do you know, then, that he was occupying those premises ?
Ans. He was around there at different times looking after and supervising matters there.
11. If he was not personally carrying on business there what was he looking after or supervising, so far as those lots were concerned ?
Ans. He seemed to be looking after the buildings and fence, keeping them up in good shape ; I saw him fix up the fence several times.
12. How long had you been in Portland when you purchased that half-lot ?
Ans. I purchased a few days after we arrived here ; I don't recollect the number of days.
13. Will you state about how many times, before you purchased that lot, that you saw him fixing up the fences ?
Ans. I couldn't say how many times.

14. Will you swear positively that before you purchased that lot you saw Mr. Chapman there fixing up fences about lots 3 and 4?

Ans. Yes; I saw him around there about that time, doing one thing or another.

15. Do you swear positively that it was before you purchased the lot that you saw him about there fixing up those fences?

Ans. I think that it was during that winter, more particularly, that he was about there fixing those fences after I bought.

16. Does your recollection serve you to swear to a single instance of his fixing up those fences, or repairing that building, or attending to it prior to your purchase?

Ans. I can't swear to no single instance or no particular day.

17. During the winter afterward, was he frequently engaged in fixing up those fences.

Ans. Yes, sir; occasionally he was around there; the boys used to tear them down, and he came there and fixed them up.

18. Was there any one living on that block 81 at the time you purchased?

Ans. I think not.

125 19. Were there not parties engaged in carrying on the butcher business on that block?

Ans. I think there was a little butchering done there that fall.

20. Who else was present at the time Mr. Chapman measured off that lot and delivered possession to you?

Ans. A. M. Starr.

21. There was no enclosure on the ½-lot you bought?

Ans. No, sir.

22. Was Mr. Stark present, or had he any knowledge of what was going on at the time Mr. Chapman delivered the possession of this half-lot to you?

Ans. He was not present and had no knowledge of it, for he was not here; Captain Couch, his agent, was here and knew about it.

(Defendant objects to what is said about Captain Couch, as not responsive to the question.)

23. You have stated in your answer to interrogatory eleven that you became acquainted with George Sherman in the spring or summer of 1851; have you any means of fixing more definitely the time?

Ans. No, sir.

24. Was your brother, Addison M. Starr, interested with you in this half-lot, and all the property that you owned or claimed in block 81.

Ans. Yes, sir; he was an equal partner.

25. Can you tell who this man Reed was that you think made the improvement on lot 3?

Ans. I cannot; he was the man whose daughter William Hearn married.

26. What knowledge have you that J. W. Cleaver bought any portion of block 81?

Ans. I have Powell's deed to Cleaver.

27. Have you that deed with you?

Ans. Yes, sir.

28. Will you allow it to be filed and made part of your testimony in this case?

(Objected to as incompetent.)

Ans. I cannot.

29. What time in the winter of 1850 did you hear of the claim of Benjamin Stark to a portion of the Portland town-claim?

126 Ans. At different times through the winter.

30. You say that the first time that you knew of Mr. Stark's residence in Portland was in 1855 or 1856; was that the earliest that you knew of his residence here?

Ans. I mean that was the time that I first knew him as residing here as a land claimant; I knew him when he was at Couch's.

31. Did you not know that in the spring of 1850 he and Mr. Lownsdale had made the agreement or indenture referred to in your bill of complaint in this suit, dated at San Francisco March 1, 1850, prior to the year 1855?

Ans. I heard that a compromise had been made between Stark and Lownsdale, but I didn't know what it was; I had never seen the papers.

32. When did you hear such a compromise?

Ans. I think it must have been in the spring of 1851 that I heard of it first.

33. What was this compromise said to be about, when you heard of it?

Ans. Said to be a settlement of a dispute between Stark and Lownsdale with regard to this land-claim.

34. When did you first hear of the existence and learn of the terms of the indenture of March 1, 1850, above referred to?

Ans. I think in the spring of 1851 I heard that there had been a compromise made; it must have been in the summer or fall of 1851 I heard of the terms of the compromise.

35. Did you have any conversation with Mr. Stark in reference to his making title to you to any part of block 81 prior to the year 1856?

Ans. I don't recollect particularly; had conversations with him from the time I got acquainted with him until within 2 or 3 years.

36. Was this indenture of March 1, 1850, between Lownsdale and Stark made the subject of any of those conversations?

Ans. Yes, sir.

37. When did you first see the indenture, or a copy of it?

(Objected to, because the witness has never said that he has seen it.)

Ans. I don't know that I ever saw it until these suits were commenced.

127 38. Did you have a knowledge of the terms of that indenture, prior to the commencement of these suits?

Ans. I had no knowledge, further than I gathered from these parties themselves, Coffin, Chapman, and Stark, and some outside parties; heard different outside parties talk about it.

39. Were you not a party plaintiff to a suit commenced in January, 1864, by your brother, Addison M. Starr and yourself, in the circuit court for the State of Oregon, for the county of Multnomah, in reference to the title to property in block 81, wherein Benj. Stark, the defendant in this case, was defendant?

(Objected to as not the best evidence; the record will show of itself.)

Ans. I believe was.

40. Did you and your brother not commence a suit against Benjamin Stark in one of the courts of the State of Oregon in January, 1864?

(Objected to as not the best evidence; the record will show better than the recollection of the witness what was in it and what it was about.)

Ans. There was a suit of that kind commenced by us, I believe.

41. Is it not a fact that you never knew the terms of the indenture of March 1, 1850, until about or shortly before the commencement of that suit?

Ans. I did not know anything about it only what I got from the town proprietors and outside parties.

42. Were you acquainted with Stark at the time that Stark and others commenced to take steps before the surveyor-general with regard to obtaining title to the Portland town-site?

Ans. Yes, sir, I was some acquainted with him; not very well acquainted.

43. How did you ascertain the understanding with lot-holders on the Stark tract at the time Stark and others were taking steps before the surveyor-general to secure their title?

Ans. I understood it from him; that if lot-holders would go in with him and assist in getting his title he would make lot-holders good titles.

44. Did you have any conversation with Mr. Stark prior to the time when he obtained his donation certificate as to what he would do with lot-holders if he got his title?

128 (Objected to, as witness has not stated that he knew when he did get his certificate.)

Ans. We had conversation at the time he was going up to get his certificate. I don't know that he got it; I never saw it; he used to tell what he would do.

45. Did you have any conversation with Mr. Stark in reference to what he would do about giving you a title to property claimed by you in block 81, or did he tell you that he would make your title good when he got his patent, prior to the 10th day of September, 1853?

Ans. Yes, sir, he did, I think, several times; one time in particular—he was telling about the compromise with Lownsdale—he told us how it was; we asked him if it would effect the title of his block and he said no; that the agreement was that he should make title to all property that Chapman and Coffin had sold in his portion of the claim, and that they were to make title to all property he had sold in their part; and that as soon as he got a patent he would make us a deed, and it shouldn't cost us a dollar.

46. What time did the particular conversation to which you have just referred take place?

Ans. It was at the time they were talking about going to Oregon City; just before that; I can't say how long.

47. Do you recollect the year?

Ans. I think it was in the fall of 1853.

48. Where was Stark residing at that time?

Ans. I don't know where he was boarding or living at that time; I think his headquarters was down about Couch's at that time.

49. Where did this particular conversation take place?

Ans. In our office.

50. Where was your office?

Ans. On lot 2, block 81.

51. How came Stark in your office at that time?

Ans. I don't know what brought him there.

52. Was he frequently in the habit of coming to your office at that time?

Ans. He used to come around there occasionally.

53 Were you well acquainted with him at that time?

129 Ans. I was not very well acquainted with him; my brother was better acquainted with him than I was.

54. What time in the day was it when he came there?

Ans. I can't say.

55. Can you recollect whether it was during the day-time or during the evening?

Ans. I cannot.

56. Can you recollect whether it was a fair or stormy day?

Ans. I cannot.

57. Was it in your office or in your shop it took place?

Ans. I think in the office.

58. Who were present?

Ans. I can't say who was present; my brother and myself, and I think one or two others.

59. Do you recollect the name of any other person who was present at that time?

Ans. No, sir.

60. Do you recollect whether it was a week, or a month, or any particular period before Mr. Stark went up to prove up his land-claim?

Ans. I can't tell how long before; it was some time.

61. Will you swear positively that it was before and not after he went up to prove up his land-claim?

Ans. It was before.

62. Do you recollect any other particular conversation that took place prior to Stark's going to prove up his claim?

Ans. No other particular conversation.

63. Do I understand you to say that this was all the conversation from which you infer that the understanding was that before Stark proved up his claim, or at the time he proved up his claim, that if the lot-holders would go in and assist him in getting his title he would make their titles good when he got his patent, and it should not cost them a dollar?

Ans. No, sir; that was a general understanding from him that he would do that.

64. Can you give the details of any other conversation from which such an understanding can be inferred?

Ans. I cannot give the details.

130 65. What assistance, if any, did you and your brother, or either of you, render Mr. Stark in getting his title?

Ans. We rendered him assistance by not opposing him in getting his patent.

66. Is that all the assistance you rendered him?

Ans. We rendered him assistance by talking to others to get them to acquiesce in it, believing that he would make good their title, and in various other ways.

67. What were the other ways?

Ans. By befriending him, assisting him, loaning him money, and being friendly to him.

Continued until to-morrow at nine o'clock a. m.

WEDNESDAY, *October* 4, 1871.

Same counsel present.

68. What time did you learn that Mr. Stark had obtained his patent?

Ans. I can't say; soon after he got it.

69. Were you and your brother and Mr. Stark residing in the city of Portland continuously from the 1st of January, 1860, down to the time that Mr. Stark left for Congress under his appointment as Senator, in 1861?

Ans. Me and my brother were. I can't say that Mr. Stark was all the time.

70. Do you recollect what time it was when Mr. Stark left for Washington?

Ans. I can't say the exact time.

71. Did he leave before the 1st of January, 1862?

Ans. I don't recollect.

72. Did this suit in the Supreme Court of the United States, referred to in interrogatory 38, involve the title to property on what is known as the Stark tract, or was it not in reference to a portion of the property on the claim of Daniel H. Lownsdale, south of the Stark tract?

(Objected to, as the record will show what property it pertained to.)

Ans. My understanding was that it involved the whole levee property.

73. Was it not a suit to obtain an injunction against the erection of a building upon a block which was entirely upon the Lownsdale claim?

131 (Objected to, because the record will show the particular objects and purposes of the suit, purport and effect of the decree of the supreme court of Oregon, which was reversed by the Supreme Court of the United States, and what property was affected by it.)

Ans. I think it was.

74. Do you recollect about the time the appeal was taken to the Supreme Court of the United States?

(Objected to as above.)

Ans. I think in 1855 or '6.

75. Were you and your brother not at that time in possession and claiming to be owners of one-half, or a large proportion, of the block just north of the one upon which the house was just being erected, which block was also upon the Lownsdale claim?

Ans. We did not own any property north and in the adjoining block.

76. Did you not own, at the time that appeal was taken, the very property on which the building was situated which was sought to be enjoined, and also other property in the same block?

Ans. I think we did.

77. In your answer to question forty-eight you say that Mr. Stark said that if we gained the suit in the Supreme Court we would have an undisputed title; and when he got his patent he would make us a title, and it shouldn't cost us a cent. When, where, and in whose presence did he make this statement?

Ans. He said it repeatedly in the presence of parties I don't recollect. There were parties around at different times.

78. Can you specify any particular time and place where he made this statement?

Ans. I couldn't state the particular time, but he has made it repeatedly in my office, and before different parties.

79. Where was it that Stark said he would make you pay dear for it (or something to that effect) before you got title to this property now in controversy?

Ans. He said it in our office.

80. At what time?

Ans. Soon after his appointment as United States Senator.

132 81. Who were present at the time?

Ans. My brother and 2 or 3 others.

82. Were you yourself present?

Ans. I was.

83. Do you remember any one else who was present?

Ans. I don't recollect any other.

Re-examination:

Question 1. At the time you settled upon block 81, what was your age, about; was you over 21 years?

(Objected to as leading, immaterial, and not proper redirect examination.)

Answer. I was.

2. Was you an American or naturalized citizen?

Ans. A native-born American citizen.

3. Did you ever have a donation under the act of September, 1850, or a pre-emption under the act of 1841?

(Objected to as immaterial.)

Ans. I never did.

4. Did you personally reside upon that block and lot; and, if so, what had you upon it indicating such residence?

(Same objection.)

Ans. I had a stove and tin-shop in front; boarded and slept in the back part of the store, and lived there.

5. From the time that you learned that Ben. Stark was the land-claimant to the tract of land embracing block 81, till the time he went to Oregon City to get title, what was the general understanding among lot-holders upon that tract as to the object and intent of Ben. Stark in obtaining the Government title with reference to lot-holders generally, should he succeed in obtaining the title as the land-claimant?

(Objected to as immaterial and not proper re-examination.)

Ans. The understanding was, among all the old settlers upon his portion of the claim, *was* that he would make them a good and sufficient title without any expense to them.

6. About how much money did you and your brother expend in prosecuting the appeal?

(Same objection.)

Ans. I couldn't say exactly. Somewhere in the neighborhood of $3,000 *dollars.*

7. After the appeal was successful, did Stark ever re-imburse you any of the money you had expended?

(Same objection.)

133 Ans. Not to my knowledge; I never knew him to do it.

8. State whether or not, after the success of the appeal, Stark did or did not lay off all the levee-ground below block 81 into blocks and lots and dispose of them.

(Same objection.)

Ans. He did.

9. State, as near as you can, whether he did or did not realize large sums of money from the sales of such property, and about how much?

(Same objection.)

Ans. He must have realized a large sum of money, as that property was very valuable at that time and is now; I should judge he realized from $40 to 50,000 dollars.

Cross-exa.:

Question 1. Did you ever make any cultivation upon the Stark tract prior to the time Stark got his donation-certificate?

Answer. I can't say that I did, unless we might have had a little garden out back.

2. Will you swear that you had any such garden prior to the 10th day of September, 1853?

Ans. I think in the spring of 1851 we had a little garden out back; lettuce and such things.

70. Do you recollect what time it was when Mr. Stark left for Washington?

Ans. I can't say the exact time.

71. Did he leave before the 1st of January, 1862?

Ans. I don't recollect.

72. Did this suit in the Supreme Court of the United States, referred to in interrogatory 38, involve the title to property on what is known as the Stark tract, or was it not in reference to a portion of the property on the claim of Daniel H. Lownsdale, south of the Stark tract?

(Objected to, as the record will show what property it pertained to.)

Ans. My understanding was that it involved the whole levee property.

73. Was it not a suit to obtain an injunction against the erection of a building upon a block which was entirely upon the Lownsdale claim?

131 (Objected to, because the record will show the particular objects and purposes of the suit, purport and effect of the decree of the supreme court of Oregon, which was reversed by the Supreme Court of the United States, and what property was affected by it.)

Ans. I think it was.

74. Do you recollect about the time the appeal was taken to the Supreme Court of the United States?

(Objected to as above.)

Ans. I think in 1855 or '6.

75. Were you and your brother not at that time in possession and claiming to be owners of one-half, or a large proportion, of the block just north of the one upon which the house was just being erected, which block was also upon the Lownsdale claim?

Ans. We did not own any property north and in the adjoining block.

76. Did you not own, at the time that appeal was taken, the very property on which the building was situated which was sought to be enjoined, and also other property in the same block?

Ans. I think we did.

77. In your answer to question forty-eight you say that Mr. Stark said that if we gained the suit in the Supreme Court we would have an undisputed title; and when he got his patent he would make us a title, and it shouldn't cost us a cent. When, where, and in whose presence did he make this statement?

Ans. He said it repeatedly in the presence of parties I don't recollect. There were parties around at different times.

78. Can you specify any particular time and place where he made this statement?

Ans. I couldn't state the particular time, but he has made it repeatedly in my office, and before different parties.

79. Where was it that Stark said he would make you pay dear for it (or something to that effect) before you got title to this property now in controversy?

Ans. He said it in our office.

80. At what time?

Ans. Soon after his appointment as United States Senator.

132 81. Who were present at the time?

Ans. My brother and 2 or 3 others.

82. Were you yourself present?

Ans. I was.

83. Do you remember any one else who was present?

Ans. I don't recollect any other.

Re-examination:

Question 1. At the time you settled upon block 81, what was your age, about; was you over 21 years?

(Objected to as leading, immaterial, and not proper redirect examination.)

Answer. I was.

2. Was you an American or naturalized citizen?

Ans. A native-born American citizen.

3. Did you ever have a donation under the act of September, 1850, or a pre-emption under the act of 1841?

(Objected to as immaterial.)

Ans. I never did.

4. Did you personally reside upon that block and lot; and, if so, what had you upon it indicating such residence?

(Same objection.)

Ans. I had a stove and tin-shop in front; boarded and slept in the back part of the store, and lived there.

5. From the time that you learned that Ben. Stark was the land-claimant to the tract of land embracing block 81, till the time he went to Oregon City to get title, what was the general understanding among lot-holders upon that tract as to the object and intent of Ben. Stark in obtaining the Government title with reference to lot-holders generally, should he succeed in obtaining the title as the land-claimant?

(Objected to as immaterial and not proper re-examination.)

Ans. The understanding was, among all the old settlers upon his portion of the claim, *was* that he would make them a good and sufficient title without any expense to them.

6. About how much money did you and your brother expend in prosecuting the appeal?

(Same objection.)

Ans. I couldn't say exactly. Somewhere in the neighborhood of $3,000 *dollars.*

7. After the appeal was successful, did Stark ever re-imburse you any of the money you had expended?

(Same objection.)

133 Ans. Not to my knowledge; I never knew him to do it.

8. State whether or not, after the success of the appeal, Stark did or did not lay off all the levee-ground below block 81 into blocks and lots and dispose of them.

(Same objection.)

Ans. He did.

9. State, as near as you can, whether he did or did not realize large sums of money from the sales of such property, and about how much?

(Same objection.)

Ans. He must have realized a large sum of money, as that property was very valuable at that time and is now; I should judge he realized from $40 to 50,000 dollars.

Cross-exa.:

Question 1. Did you ever make any cultivation upon the Stark tract prior to the time Stark got his donation-certificate?

Answer. I can't say that I did, unless we might have had a little garden out back.

2. Will you swear that you had any such garden prior to the 10th day of September, 1853?

Ans. I think in the spring of 1851 we had a little garden out back; lettuce and such things.

Question by W. W. Chapman, for plaintiff:

Do you know whether Ben. Stark had any garden or place of residence on the Stark tract prior to 1853; if so, where and what was it?

(Objected to as immaterial.)

Ans. I did not know of his having any.

L. M. STARR.

Adjourned until the 6th instant, at one o'clock p. m.

In the United States circuit court for the district of Oregon.

LEWIS M. STARR } In equity.
v.
BENJAMIN STARK.

Now, at this 27th day of October, A. D. 1871, comes the complainant, before Ralph Wilcox, an examiner of said court, for the purpose of taking testimony in the above-entitled cause, and no one appearing for the defendant, although notice thereof had been left at the office of William Strong, solicitor for said defendant, the taking of such testimony is postponed until to-morrow morning at nine o'clock a. m.

134 SATURDAY, *October* 28, 1871.

The complainant in the above-entitled cause appearing by Mr. W. W. Chapman, his solicitor, and no one appearing for the defendant.

STEPHEN COFFIN, a witness called on the part of the complainant, was duly sworn and testified as follows:

I know the parties to this suit, Benjamin Stark and Henry Failing, and I am the Stephen Coffin mentioned in the papers. I have resided in Portland most of the time since April, 1849; my first acquaintance with Benjamin Stark was some time in the summer of 1849; Mr. Lownsdale, Mr. Chapman, and myself were in possession of the Portland land-claim from January 1st to April 15, 1850; we claimed all the land between the Couch claim and the Johnson claim, supposed to be 640 acres, including block number 81.

Question 1. What did you do in pursuance of your claim, and as indicative of a claim during the period mentioned, upon and about said land-claim?

(William Strong, of counsel for defendant, appears and objects to the question as immaterial.)

Answer. We employed R. V. Short to survey off and make a plat of a large portion of the land-claim. We erected buildings and occupied the claim. I myself cultivated a garden, and we sold lots and blocks. The surveys made by us extended over the Stark tract. Mr. Stark was not a resident of Oregon during the time mentioned. I knew John H. Couch and George Sherman.

2. Did you have any communication with Benjamin Stark prior to January, 1850, concerning any interest that he claimed in the Portland land-claim? If so, state where it was and what it was.

Ans. I met Mr. Stark some time during the summer of 1849, in San Francisco, at his office, over a store; he told me that he was the owner of an undivided half of the Portland land-claim, and I told him that I was the owner of an undivided half; we talked over what Mr. Lownsdale claimed; Mr. Lownsdale claimed to be the owner of the whole claim, and sold me the half. I told Mr. Stark that if he was the owner of one-half it was immaterial to me; I owned one-half, and I should take no side between him and Lownsdale.

135 3. Did John H. Couch ever say anything to you about Stark's interest in the Portland land-claim between the time of your return from San Francisco and March, 1850?

(Objected to as immaterial and calling for hearsay testimony.)

Ans. I think I had a conversation with Mr. Couch, and he stated to me in substance the same that Stark had.

4. In what capacity was Couch pretending to act at that time?

(Same objection as above.)

Ans. I could not state whether at that particular time he was acting as Stark's agent or was talking to me as his friend; he thought it would be better for all parties interested to have the matter compromised and settled. I told him what my interest was here, and I would be very willing to do anything to effect a compromise.

5. Was Stark or any one for him and in his name occupying, during that period, any portion of the Portland land-claim?

(Objected to as immaterial.)

Ans. No, sir; there was not.

6. Look at the papers marked "A" and "B," to be attached and made a part of your deposition, and state if you know anything about the originals of which those purport to be copies; if so, state all you know about them.

(Objected to as immaterial.)

Ans. The contracts that this purports to be a copy of, according to my recollection, were in possession of Mr. Couch or Mr. Sherman, and Daniel H. Lownsdale; they were in the possession of these men at the time I signed them, and were left in their hands, being in Mr. Couch's office. Couch's office was on Couch's claim, just below the Portland land-claim. I don't remember whether I have seen them since or not.

7. State which of the originals of these exhibits or papers that you signed.

(Same objection.)

Ans. The one that is marked "A" was signed by myself, Chapman, and Couch, for Benjamin Stark.

8. When did you first learn of the execution of the paper of which the paper marked "A" purports to be a copy?

(Same objection.)

136 Ans. I think soon after Mr. Lownsdale returned from San Francisco, in the spring of 1850, and before it was signed by me.

9. What did you and Chapman do, or what was done in order to procure your ratification of that agreement?

(Same objection.)

Answer. I think Mr. Sherman called on me, in the first instance, to ratify that agreement, and I peremptorily refused to sign it at first, as I claimed it was signing away a portion of my rights. Mr. Lownsdale was very anxious to have it signed by Chapman and myself, and we had several meetings on the subject. Mr. Chapman refused at first to acquiesce in it, and Mr. Chapman and myself afterwards agreed to sign the contract with this addition to it marked "B." I think Mr. Couch, Sherman, Lownsdale, Chapman, and myself were present when we signed it. There might have been others present; I don't recollect now.

10. At the time that paper was signed by you had Sherman exhibited to you any power of attorney from Stark?

(Same objection.)

Ans. I think not.

11. Who claimed to be Stark's attorney in these negotiations?

(Same objection.)

Ans. John H. Couch.

12. After that paper was signed by you, Chapman, and Couch, what was done with it?

(Same objection.)

Ans. My recollection now is that one copy was given to Mr. Couch and the other to Daniel H. Lownsdale.

13. State whether or not Sherman, as the agent of Stark, or otherwise, made any objection to the modification of the contract effected, or intended to be effected, by the original of the paper marked "B."

(Same objection.)

Ans. I think that Mr. Sherman pretended to be the agent of Stark, and that the modification was arranged with him, and that Mr. Couch was called in to sign the papers. That is my recollection of it.

14. After the signing of these papers, what was done in regard to the boundaries of the claim by you and Chapman?

(Same objection.)

Ans. I think the signing of those papers was a surrender of
137 that part of the claim to Mr. Sherman, or Mr. Couch, as Stark's agent. I abandoned that part of the claim and ceased to exercise any control over it.

15. How soon after that did you see Mr. Stark, and where did you see him?

Ans. I think it was some time in June, 1850, in Portland.

16. State anything that was said by him in regard to this modification of the settlement by Couch, and whether or not he expressed any dissatisfaction or dissent.

(Objected to as immaterial.)

Ans. It was talked over between Mr. Stark and myself the last of June, either here in Portland or on the steamer between here and San Francisco. He said he would sanction the contract, or submit to it, (I don't know which,) and carry out its provisions.

17. Did Sherman and Couch, at the time of signing the papers, and did Stark, in June, at the time of your conversation, know of the sale of block 81 on the Stark tract?

(Same objection.)

Ans. I think that they were notified, or had been told, of all lots comprised in that modification. I don't recollect that any particular lot was mentioned. We furnished a list to Sherman and Couch of all the lots that had been sold while Lownsdale was in California, and prior to that modification.

18. Had block 81, on the Stark tract, been sold while Lownsdale was in California?

(Same objection.)

Ans. Yes, sir.

21. Did Benjamin Stark ever claim any sum of money from you by virtue of any provision in the originals of Exhibits A and B?

(Same objection.)

Ans. He never did.

22. Did he ever say anything to you about having a claim of that kind upon Mr. Lownsdale?

(Same objection.)

Ans. He did; he stated that he was entitled to certain moneys specified in that contract. I don't remember the amount—a large amount of money. He told me that Mr. Lownsdale and him had adjusted the amount, and that Lownsdale had withdrawn his claim to the Stark tract, and that Stark had given him a receipt in full for the amount.

138 23. State whether or not Stark was a resident of any part of the Portland tract on the 30th of March, 1849, and on up to December, 1850; and, if so, when and where, and how long?

(Same objection.)

Ans. He was not residing on this claim between those dates; I mean the Portland claim, embracing the Stark tract.

24. From the time of the ratification, on the 15th of April, 1850, until the 10th of March, 1852, what was the general understanding among lot-holders on the Stark tract as to whom they would look to to obtain the Government title?

(Same objection, and that it implies something that has not been proved.)

Ans. To Benjamin Stark.

25. What would have been the result if Couch for Stark, or Stark himself, had refused to ratify the sales mentioned in the paper attached, marked "B"? I mean the result as to surrendering possession by Lownsdale, by Coffin, and by Chapman.

(Objected to as immaterial.)

Ans. I have no doubt but that we should have refused to give Mr. Stark possession of that tract, and have held possession of it as we had prior to that ratification.

26. On the 15th of April, 1850, who was in possession of block 81?

Ans. W. W. Chapman.

27. How was he claiming it?

(Objected to as immaterial.)

Ans. By purchase from the proprietors, Lownsdale, Coffin, and Chapman.

28. What lots did that block embrace?

Ans. There were, at an early day, two markings of lots on that block; at first, there were lots 1, 2, 3, 4, 5, 6, 7, and 8; afterwards on the adopted map that block embraced lots 1, 2, 3, and 4.

29 What improvements had that block on it on the 15th of April, 1850?

Ans. There was a building on it, called the slaughter-house, and I think, at the time, was used as a warehouse.

30. What was the consideration of the purchase of that block by Chapman; that is, what amount?

(Objected to as immaterial.)

Ans. Two thousand dollars.

139 31. About what time, as near as you can state, did Benjamin Stark become a resident upon what is known as the Stark tract?

(Same objection.)

Ans. I think it was some time in the fall or winter of 1850. I am not positive about it.

32. What was the relation between the land-claimant and the lot-holders on the Stark tract up to and including the time of the ratification in reference to obtaining the title of the Government?

(Objected to as immaterial and not the best of evidence.)

Ans. Lot-holders held as lot-holders, and Lownsdale, Coffin, and Chapman held as proprietors. The lot-holders looked to the claimants, Lownsdale, Coffin, and Chapman, for their title prior to that adjustment.

33. How were lots sold by the said land-claimants, with reference to obtaining the Government title?

(Objected to as immaterial.)

Ans. They were sold with a covenant or agreement that they would make a deed when they got title from the General Government.

(Answer objected to as not the best evidence of the contents of covenant or agreement, which is not produced.)

34. What was the understanding of the parties in making the ratification, with reference to the Government title?

(Objected to as immaterial, and as implying something that has not been proved.)

Ans. The understanding was that Mr. Stark was to procure the Government title and ratify our agreements or carry them out.

35. State whether or not Couch and Sherman, at the time of the ratification, did or did not know that lots had been sold on the Stark tract by Lownsdale, Coffin, and Chapman, with reference to obtaining the Government title?

(Objected to as leading and immaterial.)

Ans. Mr. Couch undoubtedly was familiar with all the facts in relation to the matters between lot-holders and the claimants. Mr. Sherman had been here but a short time. I don't know what knowledge he had about it.

140 Cross-ex. by William Strong, esq.:

Question 1. You say that Mr. Lownsdale, Mr. Chapman, and yourself were in possession of the Portland land-claim from January 1st to April 15th, 1850. Was not the greater part of the claim, at that time, an unimproved and unenclosed forest?

Ans. Yes.

2. Where was Mr. Lownsdale during all that time?

Ans. Mr. Lownsdale made a trip to San Francisco and back during that time. The balance of the time he was here on the claim.

3. Was block 81 surveyed prior to March 1, 1850?

Ans. I have no knowledge that it ever was surveyed.

4. Do you not know that it was not surveyed or laid off prior to the 1st day of January, 1850?

Ans. I know that it was laid off prior to that date.

5. Did Chapman, Lownsdale, and yourself, or either of you, erect any buildings upon or cultivate any part of block 81 prior to the 1st day of March, 1850?

Ans. Not that I recollect of.

6. What time in the spring of 1850 did Mr. Lownsdale return from San Francisco?

Ans. I do not recollect.

7. Did Mr. Sherman arrive here before or after Mr. Lownsdale's return from San Francisco in the spring of 1850?

Ans. I have an impression that he came before Mr. Lownsdale did.

8. Are you positive that he came in the spring of 1850, before Mr. Lownsdale's return from San Francisco?

Ans. I am not positive, but that is my impression.

9. You say that you had a conversation with Mr. Stark some time in June, 1850, in reference to the contract about the town-site of Portland, and he said that he would sanction or submit to it and carry out its provisions. What contract was referred to in that conversation between you and him?

Ans. I think it was the contract made between him and Lownsdale in San Francisco and ratified by Mr. Chapman and myself here.

10. Did you have the contract before you when you were talking about it?

141 Ans. I think not.

11. Do you recollect where this conversation was, whether at Portland or on the steamer?

Ans. Just at this time I do not recollect.

12. Can you tell precisely the month that you had that conversation, from your recollection?

Ans. I think it must have been in June; I might be mistaken.

13. Then your recollection is not positive whether it was in June or not?

Ans. No, sir.

14. Are you willing to swear that it was in the year 1850?

Ans. I am.

15. Can you give us all that conversation that took place between you and him on that occasion?

Ans. I don't suppose I could.

16. I mean in reference to the subject of this contract of March 1, 1850?

Ans. I could give the substance of the conversation but not the words.

17. Who commenced the conversation, you or Mr. Stark?

Ans. I could not state; I don't know.

18. Do you recollect any person being present besides yourself?

Ans. I don't recollect now.

19. Do you recollect the circumstances that led you to conversing on this subject?

Ans. I don't think of any particular circumstance in response to that question now.

By consent the further taking of testimony is postponed until Monday, the 30th instant, at nine o'clock a. m.

MONDAY, *October* 30, 1871.

Examination continued:

Question 20. Have you any fact fixed in your mind which will enable you to speak definitely as to the time or place at which this conversation occurred?

Answer. I know that I met Mr. Stark here in Portland; and I know that we went together to San Francisco on the steamer;
142 and I know that we had several conversations; the particular time or place I don't now recollect.

21. Did not Mr. Stark, in the conversation which you have alluded to, deny the authority of Mr. Couch or any one else to modify the contract made between himself and Mr. Lownsdale at San Francisco on the 1st of March, 1850?

Ans. I have no recollection that he did.

22. Will you swear positively that he did not?

Ans. No, sir.

23. Have you not been a witness on several occasions, prior to this time, in suits between these parties, in reference to the land involved in the present suit, where questions arose in regard to this contract of the 1st of March, 1850, as to whether the modification that had been made was by the authority of Stark or not?

Ans. I think I have been questioned on this same subject before.

24. Do you recollect whether that you have before stated that Mr. Stark said that he would sanction or submit to the contract and carry out its provisions?

Ans. I don't remember now whether that question has been asked of me before; if it has, I must have made the same answer.

25. Was block 81 mentioned in this conversation between you and Mr. Stark?

Ans. I have no recollection that it was.

26. Are not the Mr. Sherman and the Mr. Couch mentioned by you both dead?

Ans. Mr. Couch is dead; as to Mr. Sherman, I don't know; I don't think I ever heard of his death.

27. Are you positive that Mr. Sherman was present at the time of the ratification of the contract by yourself and Colonel Chapman?

Ans. I have no doubts upon that subject but what he was.

28. Was Mr. Stark present?

Ans. No, sir.

29. Was block 81 marked out upon the ground prior to April 15, 1850?

143 Ans. I have no recollection that there was any marks made upon the ground prior to that date.

30. When did Mr. Stark say to you that he was entitled to a large amount of money from Mr. Lownsdale, and that he and Mr. Lownsdale had adjusted the amount; and that Lownsdale had withdrawn his claim to the Stark track, and that he, Stark, had given him a receipt in full?

Ans. I have had several conversations with Mr. Stark in reference to Mr. Lownsdale's indebtedness to him, and it was shortly after Mr. Lownsdale had abandoned the claim that I had the conversation with Mr. Stark about the adjustment of the amount and the receipt.

31. Do you mean shortly after the execution of the agreement between him and Stark of the 1st of March, 1850?

Ans. No, sir; I did not mean that. Mr. Lownsdale filed his notification, I think, in March, 1852, covering the Stark tract, and this conversation was after that.

32. Who built the slaughter-house that you say was on that property in April, 1850?

Ans. I do not know.

33. You stated that the consideration for the purchase of that block by Chapman was $2,000; do you not know that there was not a dollar paid by Chapman for that block at the time he professed to acquire the title to it?

Ans. I know that there was no passed between the parties at that time.

34. Was Mr. Lownsdale here at the time Mr. Chapman professed to have acquired title?

Ans. No, sir.

Re-examination by Chapman:

Question 1. State whether the proprietors were not in the act of surveying some portions of the town at the time Mr. Lownsdale left for California.

(Objected to as immaterial.)

Answer. My recollection is that the survey was completed before he went.

2. Had Lownsdale any other attorney in fact acting for him, or professing to act for him, in Portland, than Chapman during the time that he was gone to California?

144 (Objected to as immaterial, implying the existence of a fact not proved, and not the best evidence.)

Ans. I think not.

3. When you say in your cross-examination, in answer to interrogatory 22, that you will not swear positively, do you mean to say that you have or have not doubts upon the subject?

(Objected to as immaterial.)

Ans. I have no doubt upon that subject.

4. State whether or not if Stark, in the conversation referred to, had denied the authority of Couch, or any one else, to modify the contract, you would or would not have been likely to have remembered it.

(Objected to as leading and immaterial.)

Ans. I think I should have remembered it.

5. In answer to cross interrogatory 25, you say that you have no recollection that block 81 was mentioned in the conversation between you and Stark; state whether at that time block 81 was occupied by any one; and, if so, by whom; and whether it was an open and visible possession or not.

(Objected to as leading, immaterial, and not proper re-examination.)

Ans. I think that I have already stated that it was used as a warehouse, and I have no doubt but that the warehouse was visible. I think it was by Mr. Chapman. I had a large amount of salt and merchandise stored in it at the time, I think I got from Mr. Chapman.

6. Who was in possession of the slaughter-house, so called, on the 30th of March, 1849, when you purchased into the Portland claim?

(Objected to as immaterial.)

Ans. It was in possession of Mr. Lownsdale, and turned it over to me, I think, on the 30th of March, 1849.

7. State whether, at the time last mentioned, Daniel H. Lownsdale turned over to you the possession of the Portland land-claim; and whether or not, at that time, Benjamin Stark, or any other person, opposed your taking the possession.

(Objected to as leading and immaterial.)

Ans. He did, and no one objected to it.

8. State how long you continued in the possession of said claim, and who, if anybody, succeeded to the same, or any part of it.

(Objected to as immaterial.)

145 Ans. I was in possession until December, 1849, and then W. W. Chapman became interested, and the contract of holding was modified so that Mr. Chapman, Mr. Lownsdale and myself held it jointly. It was on the 13th of December.

9. State how long the three persons before mentioned remained in the possession of the whole of that claim, and who, if anybody, succeeded to the possession of any part of it.

(Objected to as before.)

Ans. Mr. Chapman, Mr. Lownsdale and myself held as land-claimants until we relinquished a portion of it to Benjamin Stark at the time mentioned in my former answer.

10. In your answer to cross-interrogatory 33, you say that you know that there was no money passed between the parties at that time. State how the consideration for that block was paid.

(Objected to as immaterial.)

Ans. There was an exchange of property, and deeds were passed at the same date.

11. State the respective valuations and the property exchanged.

(Same objection.)

Ans. Block 78 was deeded to Daniel H. Lownsdale, and block 79 was deeded to S. Coffin—each valued at $3,000. Block 81 was deeded to W. W. Chapman, and valued at $2,000.

12. State how these valuations and the difference in them were settled.

(Same objection.)

Ans. The valuation was fixed by agreement, and there was an open account between Mr. Lownsdale, Chapman, and myself, amounting to

large sums, and was adjusted by settlements either in property or money.

13. State whether or not when Mr. Lownsdale returned from California the transfers of these three blocks were or were not the subject of settlement; and if so, how.

(Same objection.)

Ans. They were the subject of settlement, and entered into an account of something over $20,000 in town property, and was satisfactorily adjusted.

14. State whether or not, in the settlement referred to, any amount of cash previously received by Mr. Chapman was taken into consideration.

(Same objection.)

146 Ans. All moneys received by Mr. Chapman for lots sold was entered into the accounts and adjusted.

15. State whether at that settlement Mr. Lownsdale made objection to the transfer and exchange of the blocks referred to.

(Objected to as leading and immaterial.)

Ans. He did not.

16. In whose part of the claim as patented were blocks 78 and 79?

(Objected to as immaterial.)

Ans. Daniel H. Lownsdale's.

17. State whether in that settlement there were or were not an accounting of the sale of any other lots by Chapman as attorney in fact for Lownsdale during his absence in California.

(Same objection.)

Ans. There was several other lots.

18. State whether or not in any case such sales were objected to by Mr. Lownsdale.

(Same objection.)

Ans. They were not.

Recross ex.:

Question 1. State whether Mr. Stark was present at any of these settlements and accountings that you have spoken of.

Answer. I think not.

2. What is your age?

Ans. I was 64 the 4th day of last May, as I was informed.

S. COFFIN.

Adjourned until to morrow morning at 9 o'clock a. m.

TUESDAY, *October* 30, 1871.

Deposition of George H. Flanders, taken and subscribed before me, pursuant to notice, at the date above written. Present, W. W. Chapman for complainant, and William Strong and John Catlin for defendant.

GEORGE H. FLANDERS being called by complainant and duly sworn, deposes and testifies as follows:

Question 1. State your residence and occupation.

Answer. My residence is Portland and occupation wharfinger.

2. How long have you resided in Portland?

147 Ans. I came here in August, 1849, and run a vessel between here an' San Francisco about a year and a half, and have lived here since.

3. Are you, and have you been, acquainted with Benjamin Stark, D. H. Lownsdale, Stephen Coffin, W. W. Chapman, John H. Couch, George Sherman? If so, state how long.

Ans. I have known them all since 1849 except Mr. Sherman, and I think he came here in 1850.

4. Are you the administrator of the estate of John H. Couch; and, if so, have you in your possession, or under your control, any letter or power of attorney from Benjamin Stark to the said Couch?

Ans. I am administrator, and have a power of attorney from Stark to said Couch.

5. Please present them for the inspection of counsel. The witness here presents two papers for the inspection of counsel. Are these all the papers in your possession upon this subject?

Ans. As far as I know, that is all. I have not looked for any more. That is all I have seen on that subject.

6. Are you acquainted with the handwriting of Benjamin Stark?

Ans. I think I am.

7. Look upon the signatures Benjamin Stark attached to these papers, and state whether it is the handwriting of Benjamin Stark.

Ans. I don't know.

8. Do you know where is the original of the papers shown by you, of which they purport to be copies?

Ans. I don't know.

9. Among the papers of Captain Couch are there any similar to those you have shown?

(Objected to as immaterial.)

Ans. I saw those, and didn't look for any more. I don't know.

10. Will you allow these to be made a part of your deposition?

Ans. I am willing, if there is nothing wrong about it. [The papers purporting to be a copy of a power of attorney and letter from Stark to Couch, here offered, and attached to this deposition, and marked "Exhibit A."]

(Defendants object to the paper as immaterial, incompetent, and no proof of the original.)

148 11. State whether you recollect of ever having seen the original of these papers in the hands of Captain Couch.

Ans. I have not.

Continued until to-morrow morning at 9 o'clock a. m.

WEDNESDAY, *November* 1, 1871.

12. Since your examination on a previous day, have you searched for the original of the power of attorney and letter about which you have been examined; and, if so, with what success?

Ans. I have looked for the power of attorney and letter, and have not found them.

13. From the search which you have made, state whether the power of attorney and letter referred to are among the papers of John H. Couch.

Ans. I don't think they are.

GEO. H. FLANDERS.

EXHIBIT A.

Know all men by these presents that I, Benjamin Stark, merchant, resident of Portland, in the Territory of Oregon, do hereby make, constitute, and appoint John H. Couch, of Portland aforesaid, (merchant

and my mercantile partner,) my true and lawful attorney, for me, and in my stead, to do any and all acts, during my temporary absence from this Territory, which I might myself lawfully do were I personally present, hereby ratifying and confirming all and every act which my said attorney shall so perform, and, by these presents, recalling and annulling all authority conflicting with this letter of attorney which I have previously given to any person or persons whatsoever.

Witness my hand and seal, at Portland, this 26th day of September, A. D. 1849.

BENJ. STARK. [SEAL.]

Witness:
WM. SETON OGDEN.

JOHN H. COUCH, Esq.:

149 SIR: With this you have from me a power of attorney of the fullest character, under which, during my absence from the Territory, you can look out for my interests, particularly with reference to my interest in the Portland town-claim.

As regards the claim, I wish you to notify Mr. Coffin, as soon as he returns, of the true position of things, and, if possible, have the difficulty concerning my undivided half settled. I have spoken to Jas. W. Nesmith, esq., and to Mr. Pritchard, secretary of state, and they will both hold themselves in readiness to act as my counsel.

Should you find, after the return of Mr. Coffin, that the matter can be brought no nearer to a settlement upon just and equitable principles, I wish you to submit to them (Nesmith and Pritchard) all my papers, a part of which you have herewith, and others which you can have from A. L. Lovejoy, esq., upon application to him, and direct them to pursue such measures as they deem most judicious.

Mr. Lovejoy can give some valuable hints to my counsel, as he was formerly my agent. It will be necessary for you to advise the public of your appointment as my attorney during my absence. The proper kind of notice to publish, Nesmith or Pritchard can prepare.

Wishing that you may have but little trouble with my affairs, yet trusting that you will battle to the utmost for my rights if necessary, I am yours, affectionately,

BENJ. STARK.

PORTLAND, 26th *September*, 1849.

STATE OF OREGON,
Multnomah County, ss:

I, H. C. Coulson, clerk of the circuit of the State of Oregon, for said county, do hereby certify that the foregoing copy of power of attorney and letter accompanying the same have been by me compared with the originals, and that it is a correct copy therefrom and of the whole of such originals, as the same appeared at my office and in my custody, at the date of this certificate, having been exhibited and used on trial of *of* the case of McGowan v. Ankeny, at February term, 1866, of the circuit court of said county.

150 In testimony whereof I have hereunto set my hand and affixed the seal of said court this 9th day of March, A. D. 1866.

H. C. COULSON, *Clerk.*
By EDWARD BARSTOW, *Deputy.*

[SEAL.]
[U. S. R. S., 5 cts., cancelled.]

WILLIAM S. CALDWELL, being first duly sworn, deposes and testifies as follows:

Question 1. State your name, residence, and occupation.

Answer. W. S. Caldwell; residence, Portland, Oregon, and am a clerk.

2. Do you know the parties to this suit, and the property in controversy?

Ans. I do.

3. How long have you known them?

Ans. Have known Mr. Stark and the property since 1850, and Mr. since .

4. Where did you reside, and what business were you engaged in, during the year 1850?

Ans. In Portland, from March, 1850, engaged for a few months in selling lots on the Couch claim, the latter part of the year as mail-agent.

5. Where was your office during that time?

Ans. Most of the time at Couch & Co.'s warehouse, and at Flanders' warehouse.

The examination will proceed orally.

I knew George Sherman and John H. Couch during that time; Sherman's office, in the early part of 1850, was with Couch & Co., of whom he was a clerk. Couch kept a store of general merchandise in company with Stark and John S. Sherman, making the firm of Couch & Co. Their place of business was on what is now North Front street, between B and C streets, on the Couch claim. I saw Stark in San Francisco about the 20th of February, 1850; I understood he remained there until I saw him in Portland in June, 1850. He staid here a short time, then left and returned about August and remained several months. I think he left the last of the year, and came back some time during the next year; I cannot fix the time. In March, 1850, Coffin, Lownsdale, and Chapman were considered owners of the Portland land-claim;
151 Coffin and Chapman were here and on the tract. Lownsdale arrived here about April, from San Francisco, and all were selling lots.

6. (Question.) Look on Exhibit A, attached to William Geiger's deposition, and state what you know of the execution of the original of them, or of any of them.

(Objected to as immaterial and incompetent.)

Ans. I have seen the original of which this purports to be a copy, and was present when the ratification by Couch was signed. It was signed at the warehouse of Couch & Co. Chapman was present, Lownsdale, and, I think, Coffin also. I can't say whether any one else was present or not.

7. Was there more than one meeting between these parties before the original was signed; and, if so, who were they, and was Sherman present?

(Objected to as before.)

Ans. I think there was, and that he was present; but cannot state of my own knowledge.

8. Did Sherman know of the negotiations between the parties, and of the execution of the ratification to said Exhibit A, before the meeting at which you were present?

(Objected to as before.)

Ans. I cannot say; he was around the warehouse and about the place during that time. It was a log warehouse. The room where the writing was done was partitioned off by a sail or flag.

9. When did Stark, or any one for him, erect any buildings on that portion of the Portland claim called the Stark tract, to your knowledge, and where?

(Objected to as before.)

Ans. I think in the summer or fall of 1850; my impressions are that the first one was on the block next below block , called a California house, a panneled house made of eastern lumber, was a small office. There were some houses built on First street, but I have forgotten whether in the fall of 1850 or spring of 1851; some short time after the first one was built; were built by Capt. Molthrop. I understood Stark had some interest in them; and an office on block 40 about where the United States courts are now held.

10. How long did Sherman remain here, and in what capacity was he acting after the summer of 1850.

(Objected to.)

152 Ans. He remained here during all of 1850, was clerk for Couch & Co. and Stark. I am not positive when he left. I think he was here as late as April of the spring of 1851; I cannot say positive.

11. Are you acquainted with block eighty-one, (81,) and how long have you been acquainted with it?

Ans. Since the early part of 1850.

12. What improvements, if any, were upon it; and who was in possession of it, if you know?

(Objected to as immaterial.)

Ans. I think there was an old building on it called the slaughter-house; in whose possession I cannot say positively. Col. Chapman claimed some interest in the right of possession to the property.

13. State generally the occupancy and improvements upon block eighty-one, (81;) by whom made.

(Objected to as immaterial.)

Ans. The Starrs had a tin-shop on it; afterwards Cleaver had a cabinet-shop; Sherlock & Bacon a saddler-shop. My impressions are the improvements were made by these parties. Norris and others had a building on the north end.

Cross-examination:

Question 1. Were not all the buildings that you have spoken of as being on that block cheap wooden structures, placed upon blocks?

Answer. They were.

2. Do they add anything to the permanent value of that property as real estate, in your judgment?

(Objected to because it does not appear that those buildings are now on the property; the answer of the witness having been confined to the time when he first became acquainted with the property.)

Ans. The present buildings do not.

3. In your direct examination of the improvements made upon that property, and by whom they were made, in answer to question 13, did you refer to the improvements as they now are or to them as they existed in 1850?

Ans. As in 1850, and up to 1858 or 1860.

4. Has there been any considerable improvement upon that property since that time?

Ans. Nothing permanent.

153 5. Did you know that property as block number eighty-one (81) in 1850, or is your knowledge of it, as that block, of a later date?

(Objected to as immaterial.)

Ans. My impressions are that it was numbered eighty-one (81) on the Brady map, which I first saw in 1850.

6. What time in 1850 did you first see the Brady map?

Ans. I think about August.

7. Did you know that property as block eighty-one as early as March, 1850?

Ans. I did not.

Direct examination resumed:

Question 1. Do you mean, in your answer to last interrogatory, to state that you knew that block by any other nuuber, or merely that you did not know the number of the block until you saw the Brady map?

Answer. I knew nothing of the numbering of the blocks at that time.

2. Did you ever see the Short map, or survey from which the Brady map was taken?

(Objected to as immaterial.)

Ans. I believe I have.

3. Do you know whether that block, eighty-one, appears on that map?

(Objected to as immaterial and not best evidence.)

Ans. I think the block is on it; can't say as to the number.

4. Is there not, on the river side of block eighty-one, an extensive stone-wall, laid in water-cement; and is not the street in front of the block improved by being laid with Nicholson pavement; and are there not wooden buildings on every lot in the block; and were they not, when erected, quite expensive buildings for the city of Portland at that time, and as good as the buildings erected on similar property at that time?

(Objected as leading and immaterial.)

Ans. Don't know as to the wall; haven't noticed the river side of the block for years. Front street is paved with Nicholson; the Front-street side of the block is pretty well covered with wooden buildings; none of them first-class for wooden buildings.

Cross-examination resumed:

Question 1. Was the Short map in existence before June, 1850, to your knowledge?

154 Answer. I have no positive recollection of seeing it before that time.

W. S. CALDWELL.

In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR
v.
BENJAMIN STARK. } In equity. Suit to quiet title.

Deposition of A. M. Starr, taken and subscribed before Ralph Wilcox, examiner of said court, on the 25th day of July, A. D. 1872, at eleven o'clock a. m., in pursuance of notice, to be used on the trial of said cause above entitled.

William Strong, for defendant.

ADDISON M. STARR, being duly sworn, testifies as follows:

Question 1. State your age, residence, and occupation.

Answer. I am 50 years old; residence in New York, and have no particular business now—different kinds of business.

2. State whether or not you have ever resided in Portland; and, if so, for how long a time, and between what dates.

Ans. I have resided here from October, 1850, to November, 1865.

3. State whether you are acquainted with Stephen Coffin, W. W. Chapman, and Benjamin Stark; and, whether or not you were acquainted with Daniel H. Lownsdale, in his life-time; and, if so, state when and where you became acquainted with each of them.

Ans. I was acquainted with all of them. I became acquainted with Coffin and Chapman in the fall and winter of 1850, some time before January, 1851. I became acquainted with Lownsdale in the winter or spring of 1851; I became acquainted with Stark, I think, in the summer or fall of 1851—all in the city of Portland.

4. State whether or not you are acquainted with the tract of land called in the bill, in this case, the Portland land-claim, said to contain about 640 acres of land; if so, when you became acquainted with it.

Ans. I am acquainted with it; in the fall of 1850.

5. State whether or not you are acquainted with fractional block
155 number 81, in the city of Portland, as designated on the maps of the city, and designated as block 81 in the bill; and, if so, when you became acquainted with it, who was in possession of it, and under what circumstances.

(Objected to because it does not appear that there is any such map in the city of Portland, upon which such fractional block is designated.)

Ans. I am acquainted with it; I became acquainted with it in the fall of 1850, from the fact that I wanted to buy some property here; W. W. Chapman was in possession.

6. Describe the appearance of the said block when you became acquainted with it; whether there was any improvement on it; and, if so, what were they?

(Objected to as immaterial and leading.)

Ans. There were no improvements on lots 1 and 2 as designated on the map; on lots 3 and 4 there was an old frame building and a rail-fence, or sort of corral; the building, I think, was entirely on what is known as lot 3 now.

7. State for what purpose, if any, the building referred to by you was used.

(Objected to as immaterial.)

Ans. As a warehouse for storage.

8. State whether or not you ever purchased any portion of the said block; and, if so, when, and of whom.

Ans. I made a trade with Col. W. W. Chapman for the south half of lot 2 in the fall of 1850, for my brother, Lewis M. Starr; I think, in November, 1850; I purchased of W. W. McKay the north ½ of same lot in 1851, I think along in the spring or summer, purchased in my name; I purchased lot 4 from Jackson, Powell in 1856; I purchased lot 1 in 1859, and lot 3 in 1864; I purchased lot one of Hutchins & Hale, and lot 3 of Joseph Cleaver.

9. State, as near as you can recollect, to whom the property was conveyed under the several purchases mentioned.

(Objected to because deeds are best evidence.)

Ans. With the exception of lot 2, they were all conveyed to A. M. and L. M. Starr, myself and brother.

10. State as nearly as you can now recollect, without reference to the deeds, the consideration paid for the said several parcels on said purchases by you and your brother, L. M. Starr.

(Same objection, and because immaterial.)

Ans. I think lot number 1 we paid $2,500 for; lot number 2, I
156 believe $1,000; lot number 3, either five or six thousand dollars; lot number 4, $1,000.

11. State when, if ever, you first entered into possession of any portion of said block, and what was that portion?

(Objected to as immaterial and leading.)

Ans. We went into possession of the s. ½ of lot 2 in the fall of 1850; we put a building on it; the other parts of the block we took possession as we purchased them.

12. State fully what improvements, if any, you made upon the s. ½ of lot 2, and when such improvements were made.

(Same objection.)

Ans. We erected a building about 16 by 40 feet, one story, in the fall and winter of 1850; in 1851 we put on an addition in the rear of 20 feet, I think; in 1864, I believe, we put a wall in the rear of that half lot.

13. How long did you remain in possession of that half lot and for what purpose did you occupy it?

(Objected to as immaterial.)

Ans. We occupied for a tin and stove business from December, 1850, when we moved in, till some time in the fall of 1853; was in possession till I sold out to my brother in the fall of 1865.

14. State whether or not you was ever in possession of any other portion of block 81; and, if so, what portion, and when you entered into possession of such portion.

(Same objection.)

Ans. We were in possession of each and every part of every lot in the block from the time we purchased it up to the time I sold out to my brother, in 1865. How long he has been in possession since I don't know.

15. State what improvements, if any, were made by you and your brother while so in possession of the several lots in said block, other than on the s. ½ of said lot 2.

(Same objection.)

Ans. In 1858, I think, we erected buildings on s. ½ of 1; the n. ½ of 2; and in 1859, I think it was, we put a building on the n. ½ of 4, 25 by 80 feet. In 1864 we erected a stone wall in the rear, on the bank of the river, I think 100 feet at least in length; we paid for street im-
157 provements, for Nicholson pavement in front for 125 feet, and for sidewalks, and for grading from time to time since we purchased.

16. State as near as you can, about what the cost of the several improvements, referred to by you, was, beginning with the s. ½ of lot 2.

(Same objection.)

Ans. I should say not less than $10,000. In 1850 we spent say $800 on the s. ½ of lot 2; those buildings erected in 1858 and 1859 cost us, say, $3,000; the stone wall cost us $4,000; the street improvements were, I think, in the neighborhood of a $1,000; and grading of bank for stone wall cost, I should think, $1,000; keeping up improvements, sidewalks and repairs, I don't know what we have paid—should say not less than $10,000.

17. State whether or not there were any improvements at the time of your purchase of the several portions of said block, other than the s. ½ of lot 2, upon said portions; and, if so, state if you know by whom, and when, such improvements were made.

(Same objection.)

Ans. On the n. ½ of lot number 1, when we purchased, there was a small, one-story frame building; was built by Winter & Lattimer, I think, in 1852. On the s. ½ of 1, and n. ½ of 2, there were no buildings. Lot number 3, on the n. ½ there was a two-story building, erected by a man by the name of Reed, I think, in the fall of 1851. The whole lot was covered in front when we purchased it. The balance of the building was put up by Joseph Cleaver, at different times; some in 1853, '54, '55, and along there; was making improvements and alterations there up to 1860. On lot number 4 no improvements when we bought.

18. State whether or not you was ever acquainted with one George Sherman; and, if so, when did you first become acquainted with him, and how long, and where did you know him?

(Same objection.)

Ans. I was acquainted with a man by the name of George Sherman here; first acquainted with him in the winter of 1851; I knew there was a man of that name had an office here in the fall of 1850; I was acquainted with him during his residence here; don't know how long it was.

19. Where did Benjamin Stark reside during your acquaintance with him?

(Same objection.)

158 Ans. I understood his residence was in San Francisco at the time I became acquainted with him; that was in 1851—in summer or fall—my first acquaintance with him. In 1852, I think, Mr. Stark claimed his residence here, and until the fall of 1861; I don't know but longer; I don't remember when he left here for good.

20. State how much of the time from the time you became acquainted with Stark, (in 1851 until 1860,) Stark was in the city of Portland.

(Same objection.)

Ans. I should say most of the time, so far as I know, since the fall of 1851 up to fall of 1861.

21. About how many inhabitants and how many houses were there in the city of Portland in the fall of 1850, when you say you erected a building on the s. ½ of lot 2?

(Same objection.)

Ans. I shouldn't think there were over 500 inhabitants when we got here; I don't know how many buildings; I can't say; there might have been 100 buildings scattered around on Couch's and Portland claim.

22. Who, if anybody, occupied the several lots or parcels of said block 81, from the time you first became acquainted with said block up to the time of your purchase, and for what purpose and in what manner?

(Same objection.)

Ans. Chapman owned the block on my first acquaintance with it; s. ½ of lot 2 was the first bought in the block, that I know of; s. ½ of lot 2 was purchased by us and used as a tin and stove store, warehouse, etc., until 1865, when I sold to my brother; lot number 1 was sold to Winter & Latimer, who erected a warehouse on the n. ½, and it was used for that purpose, and for mercantile purposes, until the time we purchased, used by Winter & Latimer, Charles Hutchins, and Barnhart; lot number 3 was sold to Jackson Powell, as I understood, by Chapman in 1851; a building was erected on it in fall of '51 or '2; said building and the improvements made on it up to the time we purchased was used for a boarding-house awhile, and manufacture of cabinet-ware, and for warehouse; lot number 4 had no improvements on it when we bought it.

22. State how often, during your occupation of said block, from the

159 time you first took possession of the south ½ of lot 2, if at all, Benjamin Stark was about the said block and in your building.

(Same objection.)

Ans. I can't say how often; he was in and out several times during the time.

24. State whether or not, if you know, the said Benjamin Stark knew of your possession and occupancy, and of the possession and occupancy of the other parties mentioned by you, of the several portions of said block during the time.

(Same objection.)

Ans. Yes, sir.

25. State whether or not the said Benjamin Stark ever made any objection to your possession or occupancy of any portion of said block, or, to your knowledge, to the possession or occupancy of any of the other persons named by you.

(Same objection.)

Ans. He never did to me. I never heard of any objection to any of the other parties. I never heard of his notifying any of them.

26. State whether or not the said Benjamin Stark knew, at the time you and your brother were making the improvements on said block mentioned by you, and at the time the other persons mentioned by you were making such improvements upon said block, that said improvements were being made.

(Same objection.)

Ans. He did: he couldn't help but know.

27. State whether or not the said Stark ever made any objection to your improvements on said block, or any portions thereof, or to the improvements of said block or any portions by the other parties mentioned by you, or notified you or such other parties, to your knowledge, of any claim on his part to any portion of said block.

(Same objection.)

Ans. He never notified or objected so far as my brother and I was concerned. I never heard of his having notified or objected against any of the other parties making such improvements.

28. State, if you know, at what time Stark applied to the land-office to prove up on his land-claim, or about the time.

(Same objection.)

Ans. I can't say exactly; I think it was 1851.

160 29. State what conversation, if any, you have had with defendant, Stark, with regard to the title of the said block 81, or the different parcels of the same.

(Same objection.)

Ans. I have had conversations with him at different times. He always said when he got his patent he would give us a deed to the property we owned in that block.

30. State about when was the first conversation you had with Stark about that property, as near as you can recollect.

(Same objection.)

Ans. I had a conversation with Stark in the spring of 1853.

31. What was that conversation, as near as you can recollect?

(Same objection.)

Ans. In that conversation, in the spring of 1853, he told me that whenever he got his patent he would give us a deed, if we wanted it, to the property in that block.

32. Can you name the time of any other particular conversation with Stark upon this subject? If so, state it and the conversation.

(Same objection.)

Ans. On the matter of titles we had a number of conversations. No other particular time, with the exception of the summer or fall, 1860, at the time Mr. Stark received his patent from the Government. He came into my office very much elated, saying he had got his patent from the Government and wished me to look at it, and then said that he would give us a deed for property we had bought in his part, or to any others who had bought in good faith, if they would only make out their own deeds; he would not be at the expense.

33. State whether or not you had any conversation with Stark, about the time he was taking steps before the surveyor-general about perfecting title to his property, about any persons making claim to his land-claim, and about the title of lot-holders in his claim; if so, what?

(Objected, same and immaterial.)

Ans. I had a conversation with Stark about that time with reference to titles here generally. He remarked that if the people here would allow or throw no obstacles in the way of Chapman, Coffin, Lownsdale, and himself in proving up and getting their patents, there would be no trouble about titles; that he believed all parties who had pur-
161 chased would get their deeds when they got their patents. He told me that many times.

34. State whether or not you ever held any official position in this city or county? If so, what, and when?

(Objected to as immaterial.)

Ans. I have. I was mayor of the city in 1857. I have been sheriff of the county two terms, and in the common council of the city twice.

Cross-examination by William Strong:

Question 1. Have those several offices that you have named always been held by reputable men?

(Objected to as immaterial.)

Answer. I have never heard of any person that held any of them being indicted for malfeasance in office.

2. Was W. W. Chapman living on block 81 in 1850, at the time when you say he was in possession of that block?

Ans. He was not.

3. Do you know the boundaries of Benjamin Stark's donation claim?

Ans. I know what was claimed or said to be his boundaries.

4. Did Mr. Chapman reside within those boundaries at the time?

Ans. I think not.

5. How do you know that Mr. Chapman was in possession of that property when you first purchased?

Ans. I only know from his using general jurisdiction about there, and from what he told me and from what others told me.

6. Do you know whether he was acting as owner himself, or as agent for the owner?

Answer. I only know from what he told me and others; that was, that he (Chapman) owned the property.

7. Name the person or persons who told you that he was the owner of the property?

Ans. A man by the name of O. M. Sheldon had a store here since the spring. Stephen Coffin told me so. I think Robt. Thompson told me so, and others; I can't remember the names.

8. Was that block at that time marked out upon the ground and staked?

162 Ans. Not to my knowledge.

9. Was there, at that time, any map or plat of that portion of the city of Portland?

Ans. I think Colonel Chapman showed me a plat of that block at the time.

10. Was it a public or private plat that he showed you, if he showed you any, and did it show more than that block?

Ans. I can't say whether it was public or private. It showed more blocks. I think it showed 3 blocks on the levee, 79, 80, and 81.

11. What is the state of your feeling towards the defendant, Stark?

Ans. We have always been on friendly terms; never had a hard word with each other.

12. Are you on friendly terms now with him?

Ans. We always speak to each other.

13. Are the men, Thompson and Shelden, whom you spoke of, living now? If so, where do they reside?

Ans. Thompson is dead. Sheldon resides at Quincy, Illinois, or did the last I knew of him.

14. Were not those buildings that you have spoken of as on block 81 slight wooden structures placed upon blocks of wood?

Ans. They were placed on wood; common wood buildings, as most wooden buildings were made in those days.

15. Are they such improvements as you would consider of any permanent value to the property?

Ans. They are.

Direct examination resumed:

Question 1. About what was the extent of the town exhibited on the plat to which you have referred in your cross-examination?

Ans. I can't say.

ADDISON M. STARR.

163 In the circuit court of the United States for the district of Oregon.

L. M. STARR, COMPLAINANT,
v.
BENJ. STARK, DEFENDANT.

LEWIS M. STARR, COMPLAINANT,
v.
BENJAMIN STARK, DEFENDANT.

CHARLES P. BACON ET AL., COMPLAINANT',
v.
BENJAMIN STARK, DEFENDANT.

It is hereby stipulated by and between the parties in each and all the above-entitled actions, by their attorneys and solicitors:

First. That Stephen Coffin and William W. Chapman each acquired title from the United States to a separate tract of land, being portions of the tract known as the Portland land claim, under the act of Congress of the United States entitled "An act to create the office of surveyor of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved September 27, 1850; and that said title was acquired by virtue of a settlement commenced by said Stephen Coffin on or about the day of , 18 , and four years' continued personal residence and cultivation thereafter upon said land; and by the said William W. Chapman, by virtue of a settlement commenced upon the day of , 18 ,

and four years' continued personal residence and cultivation thereafter upon said land; and that the lands so acquired by the said Stephen Coffin and the said William W. Chapman do not embrace the lands or property embraced in either or any of the above-entitled suits or causes, and this stipulation shall and may be used in each and all the above-entitled causes as proof of the facts hereinabove stated, provided such facts are found material under the pleadings to the issues therein,
164 and this stipulation is subject to all objections to said facts as material or competent testimony under the pleadings in said suits.

MITCHELL & DOLPH,
Solicitors for all said Plaintiffs.
W. W. CHAPMAN,
Solicitor for Plaintiffs.
WM. STRONG,
BRONAUGH & CATLIN,
Attorneys for Defendant.

In the United States circuit court, district of Oregon. In equity.

LEWIS M. STARR
v.
BENJAMIN STARK.

Deposition of W. W. Chapman, taken and subscribed before Ralph Wilcox, examiner, on the 1st day of August and following days, in pursuance of notice, to be used on the trial of the above-entitled cause.

Mr. J. N. Dolph appearing for the complainant, and Mr. William Strong and Mr. E. C. Bronaugh for defendant.

W. W. CHAPMAN, being duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Age, 63; residence, Portland; occupation, lawyer.

2. State whether or not you was ever acquainted with D. H. Lownsdale, Stephen Coffin, Benjamin Stark, George Sherman, and John H. Couch; and, if so, when and where you became acquainted with them, and how long you knew them.

Ans. I was acquainted with each and all of them; with Mr. Lownsdale, Mr. Coffin, Mr. Stark, and Mr. Couch in 1849; with Sherman, I think, in 1850. I knew Mr. Lownsdale until his death, in 1862; Couch, until his death—the date I don't remember—I think in 1869 or '70. I knew Sherman until he left this place, which date I do not remember, and Mr. Coffin and Stark until the present time. I knew them all at the city of Portland.

3. State whether or not you ever owned or had an interest in the tract of land described in the pleadings in this case as the Portland land claim; and, if so, state when and how you became interested in that claim.

165 (Objected to as immaterial and incompetent, and calling for parol evidence of facts requiring written proof.)

Ans. I owned an interest in the Portland land claim; purchased one-third interest of D. H. Lownsdale and S. Coffin, on the 13th December, 1849.

4. State, if you know, who were in possession of the Portland land claim from the date of your purchase up to the 13th day of April, 1850, and how they held or claimed possession?

(Objected to as immaterial and irrelevant.)

Ans. Stephen Coffin, Daniel H. Lownsdale, and myself; we held possession jointly, claiming as owners of the claim.

5. State what had been done prior to April 13, 1850, in relation to laying off a town site and the sale of lots upon that claim?

(Objected to, same as last.)

Ans. We had laid off a considerable portion of the claim into town lots, in addition to a portion of the town which had been laid off before I became interested, and we had been selling quite a number of lots and blocks.

6. Do you know the handwriting of Daniel H. Lownsdale, and did you ever see him write?

Ans. I know the handwriting of Mr. Lownsdale, and I have seen him write.

7. Look at the paper now shown to you, and state in whose handwriting it is, and whose handwriting the signature D. H. Lownsdale is, and when and where it was executed, if you know; and under what circumstances.

(Objected to as immaterial.)

Ans. The body of the instrument is in my handwriting, every word, letter, and figure; the signature is the signature of D. H. Lownsdale. It was executed at the city of Portland, I think at my own house, in a part of which I kept my office at the time, and was executed, I think, the day of its date. Daniel H. Lownsdale was about to go to San Francisco, and I was to attend to his business in his absence. We were engaged in the business of selling town lots. I transacted the most of the business in making sales; we had made not many sales before that time.

8. State whose property, and in whose custody that paper is?

(Same objection.)

166 Ans. It is my property and in my possession.

9. Please file it as a part of your deposition.

Ans. It is private property, and I cannot consistently do so; it affects other property in the city of Portland, and I am frequently called on to verify it.

(By agreement of counsel, a copy of said paper, marked "Exhibit A," made by the examiner, may be filed and made part of this deposition in place of the original, subject to such objections only as could be made to the original if filed. The paper purports to be a power of attorney from D. H. Lownsdale to W. W. Chapman.)

EXHIBIT A.—(Copy.)

Know all men by these presents, that I, D. H. Lownsdale, of Portland, Oregon, do hereby constitute and appoint W. W. Chapman, of the same place, my true and lawful attorney, for me and in my name, to transact and superintend my business in said Territory during my absence; to do and perform anything pertaining to my interests in Oregon which he, in his judgment, may think advisable; hereby ratifying and confirming the acts of the said Chapman. Interline, particular in signing deeds to Portland lots. Given under my hand and seal this 7th day of January, A. D. 1850.

D. H. LOWNSDALE. [SEAL.]

10. Look at the interlineations appearing on that paper, and state what they are, and when, and where, and by whom they were made?

Ans. The words "particular in signing deeds to Portland lots," inter-

lined two lines from the bottom, coming in after the word "Chapman" and before the word "given;" the figures "7" and "8" are written one on the other. I have no doubt that they were made at the time of drawing the instrument, and by myself.

11. State whether or not said Daniel H. Lownsdale went to San Francisco after the execution of said instrument; and, if so, how long did he remain absent?

(Objected to as immaterial and leading.)

Ans. He left for San Francisco immediately, or within one or two days after its execution, and did not return until a very short time before the 13th of April.

167 12. State what you did, if anything, under that paper, or the authority therein conferred on you, in the absence of said Lownsdale?

(Objected to as incompetent and immaterial.)

Ans. I laid off and sold a good many town lots, executed a number of deeds in his name, some for lots which he had sold himself and gave me a memorandum for me to execute deeds for; and done divers other things for him in his absence.

13. State whether or not you are acquainted with block 81 in the city of Portland; and if so, whether or not, during that absence of D. H. Lownsdale, you did anything, as Lownsdale's attorney, in relation to that block; and if so, what?

(Objected to as immaterial and not the best evidence.)

Ans. I am acquainted with block 81. During Mr. Lownsdale's absence, before mentioned, I sold that block, or exchanged it, in part, to W. W. Chapman; the manner in which it was done may make it a sale or partition; the facts were, that we laid off 3 blocks, perhaps more; each party was to have one block, at a certain price, charged to him in account, at the value of each respectively, charged to each on account of the owners before mentioned. As the agent of Mr. Lownsdale I chose block 78, being the most valuable for him, at a price not now remembered. Block 79 Mr. Coffin selected as being the next most valuable, and I took 81. Conveyances were made accordingly.

14. Look at Exhibit F, attached to a stipulation filed in this suit November 2, 1871, and state in whose handwriting it is, what it is, and whether or not you can refresh your recollection as to the date of the deed to Mrs. Chapman for block 81, and the consideration?

(Objected to as immaterial, incompetent, and not the best evidence.)

Ans. The paper is in my handwriting; it purports to be a copy of the original deed made for block 81, before referred to. I think the date was the 20th March, 1850. I am satisfied from my recollection of the account and this paper that the consideration was two thousand dollars, as stated in the paper, and was charged to me on the books.

15. State whether or not, when Mr. Lownsdale returned, what you had done, in relation to the sale and conveyance of block 81 to
168 yourself, and the other blocks mentioned to Lownsdale and Coffin, was reported to him by you; and if so, what he did and said in regard to the transaction?

(Objected to as leading and immaterial and irrelevant.)

Ans. When Mr. Lownsdale returned we had a settlement of the town business, sale of lots, etc., and what had been done was reported by me to Mr. Lownsdale and Mr. Coffin, both. The account embraced the disposition of the 3 blocks to which I have referred, and the account was settled between us. He made no objection to this or anything else that I had done.

16. State whether or not, in the settlement of that account, you paid the consideration in that deed for block 81, and what D. H. Lownsdale did in relation to the block mentioned as deeded to him in this transaction?

(Same objection.)

Ans. It was paid for in that account, and when we came to consider the agreement between Stark and Lownsdale I was applied to to ratify it. The land assigned by Lownsdale to Stark was a loss to me to the extent of one-third. I would not consent to giving up the claim to Stark except upon terms: one was, that Lownsdale should assign this block (78) to me; there might have been some sold out of it; I don't remember; the other was, that all sales which had been made up to the date of notice should be ratified by Stark. This was agreed to, and Mr. Lownsdale, by indorsement on the back of the deed by which I had conveyed it to him, transferred it to me.

(All that part of the answer which is not responsive to the question, and that part of the answer which refers to written instruments which are not produced, is objected to as incompetent, irrelevant, and not the best testimony.)

By consent of counsel the taking of testimony is continued until to-morrow at ten o'clock a. m.

AUGUST 2, 1872.

Examination resumed:

17. State when you first learned the execution of the agreement between D. H. Lownsdale and Benjamin Stark, dated March 1, 1850, a copy of which is attached to the deposition of William Geiger, jr., or that any agreement had been entered into between Lownsdale and Stark in regard to the Portland land claim?

(Objected to as immaterial.)

169 Ans. It was about the 13th of April, 1850; it might have been a day or two before; the precise day I cannot state.

18. State whether or not you had heard, or had any intimation, of any such agreement at the time of the conveyance of block 81 by the proprietors, Coffin, Lownsdale, and Chapman, to W. W. Chapman; and, at the time of the execution of the deeds, by said proprietors, to Coffin and Lownsdale to the blocks mentioned by you.

(Objected to as leading and immaterial.)

Ans. I had not.

19. State whether or not you ever saw the original of the said contract of March 1, between Daniel H. Lownsdale and Benjamin Stark; and if so, when and where, and under what circumstances did you see it?

(Objected to as immaterial.)

Ans. I saw it. I think the first time I saw it it was in the possession of John H. Couch. I am not sure whether he called on me in regard to it, or whether he sent word to me; I think he had it about the time of the ratification; I have always been of the impression, and I am now, that he had it at the time of the ratification. It is possible that about the same time Mr. Lownsdale showed me his duplicate.

20. State fully who was present, and what occurred at the time of the ratification you speak of.

(Objected to as immaterial.)

Ans. Wm. S. Caldwell, John H. Couch, Stephen Coffi, I think Daniel H. Lownsdale, I believe George Sherman, but I am not positive; we went to Couch's to make the ratification. I think before we went there, Mr. Coffin, Lownsdale, and myself had agreed on what should be done;

we talked over the subject of the sales made after the time specified in the original agreement; exactly what was said I do not know that I could state in detail. We regarded Mr. Couch as the authorized agent of Mr. Stark, and the ratification was agreed upon and signed as appears by the papers here.

(That part of the answer as to the light in which they regarded Mr. Couch is objected to as not responsive to the question.)

21. Look at what is termed the ratification or modification of said agreement, and the assent of Couch as Stark's attorney, upon the
170 copy attached to William Geiger's deposition, and state whether or not they are the papers you refer to.

(Objected to as immaterial, and as assuming that Couch was Stark's attorney.)

Ans. Assuming the papers referred to as being correct copies of the originals, they are; I have no doubt they are correct copies.

22. State, if you know, who were the persons holding or claiming under Daniel H. Lownsdale; who were meant in the agreement between Lownsdale and Stark, where it is provided in substance that if such should refuse to ratify and confirm the agreement, Lownsdale would, at the option of Stark, cancel the agreement.

(Objected to as incompetent, and calling for a witness's construction of a written instrument which speaks for itself.)

Ans. Stephen Coffin and W. W. Chapman, as far as I know.

23. State when and where the modification of said agreement was signed by you and Coffin, and the assent was signed by Couch, and in whose presence.

(Objected to as immaterial, and as to the time when, not the best evidence.)

Ans. I am not positive as to the place where Coffin and myself signed it, whether it was taken there drawn up ready to sign, or whether Mr. Coffin and myself had signed it before we went there; my impression is, that I had drawn up the paper two days before, and the reason why I think so is, that the instrument signed by Coffin and myself bears date the 13th, and the ratification by Couch bears date the 15th of April. I would not, at this day, be positive upon that point. The transaction was consummated at Couch's, and I think all signed there at the same time. I think the persons were present whom I have before stated.

24. State whether or not you ever had any conversation with Benjamin Stark in relation to the modification of the said agreement between him and Lownsdale by yourself and Coffin, or in relation to the assent to the same by John H. Couch for Stark, or the agency of said Couch for Stark; and if so, state fully when and where the conversation or conversations occurred, and what they were.

(Objected to as immaterial.)

Ans. Mr. Stark was not residing in Portland, and I did not see
171 him until he came up from San Francisco, in May or June. When he did come up, he called upon me for a list of the property sold by Lownsdale, Coffin, and Chapman in the tract which Lownsdale had released to him. Whether I gave him the prices at which property had been sold, I do not remember; but I gave him a list embracing all the property which we had sold; we talked the whole subject over; the place was my office, in Portland, which I think stood somewhere on block 39, on Front street.

25. State whether or not the list you furnished Stark embraced block 81, mentioned in the pleadings?

(Objected to as immaterial, and not the best evidence.)

Ans. It did.

26. State what Stark said in that conversation, if anything, about the modification of said agreement by yourself and Coffin, or the assent to the same by John H. Couch as his agent or attorney.

(Same objection.)

Ans. I cannot state his words now; there did not appear to be any question, as far as I recollect, about Couch's authority; when he came to me, he appeared to know that Couch had ratified subsequent sales, and he desired a list of them, which I gave him.

(The part of the answer not responsive to the question and which states the conclusions of the witness instead of facts, is objected to.)

27. State whether or not said Stark, at that time or any subsequent time, to you objected or dissented from what had been done in the modification of said agreement by you and Coffin, or the assent to the same by Couch as his attorney, or then or ever to you disavowed or denied the authority of Couch to make such assent.

(Objected to as leading and immaterial.)

Ans. He never did; I might have, in later years, *have* heard him say something about it, but I think, and I am pretty sure, that he never intimated anything of the kind while I owned block 81, or I should have remembered it.

28. State whether or not you know by what authority John H. Couch acted as the attorney for Benjamin Stark in assenting to that modification; and if so, how you know, and what it was.

(Objected to as leading, and not the best evidence.)

172 Ans. John H. Couch was notoriously the agent and attorney for Benjamin Stark. I think I had been told by Mr. Coffin that Couch had letters of attorney from Stark for settling controversies about the Portland land claim; he had the duplicate of the contract, and I took it for granted that he was authorized to act for him, and I never doubted Couch's faith in the matter, and Stark never denied it to me until years afterwards, if he did at all.

(That part of the answer objected to which states hearsay, and what the witness took for granted.)

29. State whether or not you ever saw any written authority from Benjamin Stark to John H. Couch to act in that matter; and if so, when and where you saw such written authority, and in whose possession it was.

(Objected to as immaterial, and not the best evidence.)

Ans. I have seen such written authority. I saw it in the possession of John H. Couch; when and where I first saw it, I am unable to state, but in a case in the circuit court of the State, in which P. J. McGowan was plaintiff against A. P. Ankeney, I think I caused Capt. Couch to bring the paper into court; it might have been that the paper was produced by somebody else; I think, however, it was by Capt. Couch himself. I think there was a letter of instructions accompanying the power. I know that Capt. Couch identified the papers.

30. State whether or not you are acquainted with the handwriting of Benjamin Stark, and have you seen him write?

(Objected to as leading.)

Ans. I have seen him write, and I am well acquainted with his handwriting.

31. State by whom the power of attorney and letter referred to by you, as identified by Capt. Couch and produced in the case referred to, were signed.

(Objected to because the writing is not produced for the inspection of opposing counsel.)

Ans. By Benjamin Stark, is my present recollection.

32. State the contents of that power of attorney and letter, as near as you can recollect.

(Objected to as incompetent.)

Ans. I can't state, with any precision, their contents. Substantially, they seemed to confer upon Capt. Couch power to act for Benjamin Stark, in regard to the Portland land claim, and in settling controversies respecting it.

173 33. Look at Exhibit A, attached to the deposition of George H. Flanders, taken in this suit, purporting to be a copy of the power of attorney and letter from Benj. Stark to Jno. H. Couch, with a certificate attached of H. C. Coulson, county clerk of Multnomah County, by Ed. Barstow, dep'ty, and state whether or not said exhibit is a copy of the power of attorney and letter from Stark to Couch referred to by you as used in the trial of McGowan v. Ankeney.

(Objected to as leading, incompetent, and immaterial.)

Ans. Substantially they are the same as the originals used in that case, and I believe and have no doubt they are verbatim copies.

34. State whether or not you was ever in possession of block eighty-one, (81,) described in the pleadings; and if so, when you went into possession, how long you retained possession, how and for what you occupied it, and to whom you delivered possession.

(Objected to as immaterial.)

Ans. On the 13th of December, 1849, I went into possession of the Portland land claim as joint owner and tenant in common with Stephen Coffin and D. H. Lownsdale, of which claim the ground included in block eighty-one (81) was a part. We and those claiming under us had the possession of that block and the warehouse situate upon it until we extended the surveys and laid out block eighty-one, (81,) and conveyed it to myself, when I and those claiming under me become possessed of it and held the possession until I disposed of it at the several dates shown by the exhibits on file, when I delivered the possession to those to whom I sold. There might have been a tenant in the warehouse at times, but they always attorned to the purchasers. On part of the block I had an irregular lot or enclosure, also a warehouse which we purchased with the property, and which we used for a warehouse, sometimes renting it.

35. Where are John H. Couch, H. C. Coulson, and Ed. Barstow?

Ans. They are dead.

36. State who was in possession of block eighty-one, (81,) at the time you furnished a list of property to Stark, and had the conversation referred to.

(Objected to as immaterial.)

174 Ans. I was; I might have had a tenant in the warehouse, or person holding under me.

37. State whether or not Benjamin Stark ever made any objection to your occupation and title to said block, or any part of the same, or, to your knowledge, to the occupation, improvement, or title of parties claiming under you, or ever made any claim to said block or any part of the same, adverse to your title or the title of those claiming under you, prior to the commencement of this litigation.

(Objected to as leading, immaterial, and as assuming that the witness and those claiming under him had title.)

Ans. He never did to my knowledge; I am sure he never did to me. The first that I ever heard of any objection on his part, I think must have been in 1860 or 1861; it might have been a little later.

38. Look at Exhibit A of this deposition, copy of power of attorney from D. H. Lownsdale to yourself, made by the examiner; compare it with the original, and state whether or not it is a true copy, word for word and figure for figure, of the original.

(Objected to as immaterial.)

Ans. I have compared it with the original, and it is a true copy thereof, word for word and figure for figure.

39. State in what manner and what steps were taken by Coffin, Lownsdale, and Chapman to procure title to that portion of the Portland land claim not released to Stark.

(Objected to as immaterial and not the best evidence.)

Ans. They partitioned the land so that each might take a part, entering into an agreement of March, 1852, and filed their notification accordingly. I believe the agreement was of March 10, 1852. They perfected title to the tracts by them so claimed.

40. Look at Exhibit number 18, attached to stipulation, filed August 1st, 1872, and state when that paper was signed, sealed, and delivered.

(Objected to as immaterial and not best evidence.)

Ans. It was signed at the date thereof, and delivered then, or within a day or two.

41. State whether or not on any other occasion than that already referred to you heard Stark make any statement or declaration in
175 relation to the modification of the agreement of March 1, between him and Lownsdale, by Coffin and Chapman; and if so, when, where, and what was that statement?

(Objected to as immaterial.)

Ans. I heard Mr. Stark say, in substance, (I can't give his words,) that there was a clause in that agreement between him and Lownsdale by which persons holding under Lownsdale were expected to ratify the agreement, and that in pursuance of that clause, or agreement, Coffin and Chapman had so far ratified the agreement as to place property sold subsequent to the date of the agreement and before notice of it upon the same footing as property sold previous to the 1st of January, referred to in the agreement. He further stated that he hadn't the agreement with him to which the ratification was attached; that was substantially what he said; he said more to the same effect, but I don't remember.

42. State whether or not, at the time of your purchase of an interest in the Portland land claim you knew of any claim, on the part of Stark, to any portion of the claim.

(Objected to as immaterial.)

Ans. I had heard something said about it; don't remember what it was.

43. State whether or not you was ever acquainted with William Seton Ogden.

Ans. Yes, I know him.

44. Where does he live?

Ans. In this city, I believe.

45. Look at the original power of attorney and letter produced by William Strong, esq., as a witness, and copies of which are attached to his deposition, and state whether you ever saw the indorsement on the letter before; and whether or not, in your opinion, the indorsement is all in the same or a different handwriting, and all made at same time or not.

(So much of the question as calls for the opinion of the witness as an expert is objected to, because no foundation is laid for it.)

Ans. These papers were produced in court, on the trial of the case of

McGowan v. Ankeny, by Capt. Couch, as a witness. My impression is that they were produced on the same trial, or trial about similar property, two or three times; it must have been in the year 1865 or
176 1866; I can't be positive as to the year. I will not swear at this late day, but it is my decided impression that Capt. Couch produced them upon subpœna; and I have no recollection of ever having seen the indorsement until this day. I feel quite sure that at no time, when they were offered in evidence, were the indorsements offered as evidence of revocation. I have no recollection of any issue respecting such indorsements, and I do not believe there were any. It is my opinion that the indorsements are all in the same handwriting, made at the same time, with the same pen and the same ink.

(That part of the answer not responsive to the question is objected to.)

Cross-examination:

Question 1. Are you the same W. W. Chapman whose name appears to the original bill of complaint, as the solicitor who commenced these suits in which you are now testifying?

Answer. Yes.

2. How long have you been engaged in the practice of the law?

Ans. About forty years.

3. Have you, or not, an agreement with your clients, the complainants in these suits, that the amount of fee you are to receive shall be contingent upon the result of this litigation.

Ans. No.

4. Had you and D. H. Lownsdale any conversation in regard to his giving you a power of attorney, prior to the time when the paper purporting to be a power of attorney from him to you, a copy of which, marked "Exhibit A," is referred to in this deposition, was drawn up and signed? If so, state what that conversation was.

(Objected to as incompetent and immaterial.)

Ans. I have no doubt we had conversation about it before it was drawn up; that is, it is probable that we had, but I have no recollection of any.

5. Was there any agreement or understanding between you that Lownsdale was to give you a power of attorney authorizing you to sign deeds to Portland lots, during his absence, before that power of attorney was drafted.

(Objected to as incompetent and immaterial.)

Ans. I have no recollection of any. Mr. Lownsdale was busy
177 for a week, before he left for San Francisco, in getting ready to leave, and my impression is that he frequently talked with me about his business. He was at my house, where I kept my office at the time, almost every evening, yet I do not remember any particular conversation.

6. Had not D. H. Lownsdale been a partner and engaged with Stephen Coffin in commission business some time prior and up to the time of his departure for San Francisco, about the 7th of January, 1850?

(Objected to as immaterial.)

Ans. I have since learned that they had been. I did not know that they were, and do not think they were at that time. At the time of Mr. Lownsdale's going to San Francisco I knew very little of what had taken place between Mr. Coffin and him.

7. Do you not know that on the same day that this power of attorney was drafted there was a dissolution of such copartnership between

Coffin and Lownsdale, and that you drafted that agreement in your own handwriting, and that the same was signed by them?

(Objected to as immaterial.)

Ans. Being this moment shown a paper which purports to be a copy of a dissolution of copartnership between Stephen Coffin and D. H. Lownsdale, I think I probably drew the original. I have an impression that I drafted an original paper of that description, but I do not know that this is an exact copy. I have also an impression, now, that that paper was drawn up as evidence of a fact that existed for some time previous. It is very probable that the parties—one or the other of them—told me of matters which have escaped my recollection. I do not know that the paper was signed by them. I have a recollection of being sworn as a witness in the Cline case, and having identified the original paper, of which this purports to be a copy, and I believe I testified to the handwriting of Coffin and Lownsdale to that paper.

8. Will you please hand the purported copy, in regard to which you are now testifying, to the examiner, and allow the same to be made a part of this deposition, to be marked "Exhibit W?"

(Objected to as incompetent and immaterial.)

Ans. No; I will not. I have nothing to do with it.

178 9. Will you swear, according to the best of your recollection and belief, where the original of this copy is?

Ans. I suppose it to be in the Cline suit, but I don't know. It wasn't a paper belonging to me.

(Counsel for defendant now offers in evidence said copy, with the indorsement by plaintiff's counsel thereon shown, as Exhibit W to this deposition. The same is received by the examiner, subject to all objections for materiality, or otherwise, that might be made to the original, if produced.)

EXHIBIT W.

The partnership in the commission business between the undersigned is dissolved by mutual consent.

S. COFFIN.
D. H. LOWNSDALE.

7TH JANUARY, 1850.

I do hereby certify that the above is a correct copy of an original paper by me filed in case of Jacob Cline v. Emma S. Lamb et als., as Exhibit number 1 to deposition of W. W. Chapman, taken before me in said suit on the 27th day of October, A. D. 1872.

C. A. DOLPH,
Referee in the suit above named.

Upon the within certificate I agree, as counsel, that this may be considered a copy of the original paper.

W. W. CHAPMAN.

10. Do you not know that block seventy-eight (78) was valued higher than block seventy-nine, (79,) or eighty-one (81) either, in the partition of those blocks which took place between yourself, Lownsdale, and Coffin, as stated in your examination-in-chief?

Ans. I think it was.

11. How much higher, according to your best recollection?

Ans. Mr. Coffin and myself fixed the prices: block seventy-eight (78) was fixed at $3,000; block seventy-nine (79) was fixed at $3,000; block eighty-one (81) was fixed at $2,000.

12. In your answer to direct interrogatory number 15, you say that when Mr. Lownsdale returned you had a settlement of the town business, sale of lots, etc. Was that settlement in writing?

(Objected to as incompetent and immaterial.)

179 Ans. The settlement was made on the basis of my account of sales and of memorandums kept, some by Mr. Lownsdale and some by Mr. Coffin, and it was figured up on pieces of paper. Mr. Coffin and Mr. Lownsdale had each received property; and some dealings between themselves, that didn't concern me, entered into the settlement.

13. Did you keep any book or books showing the condition of accounts and settlements between you as joint proprietors of the Portland land-claim?

Ans. I acted as the agent of the parties in making sales before Mr. Lownsdale went away, and after he came back until we settled; and I kept an account of sales, and exhibited that account to Mr. Lownsdale on his return; and I have that book here, which will show for itself; and there never was a lot sold in the town, during the absence of Mr. Lownsdale, belonging to the parties, that the amount for which that lot sold was not entered in it, to the best of my recollection.

14. Does that book show the settlement with Lownsdale on his *his* return from California, to which you have testified, in which block eighty-one (81) was accounted for upon settlement had; and, if so, upon what page of said book does that settlement appear?

(Objected to as incompetent and immaterial.)

Ans. The settlement was made on separate pieces of paper, taking my account of sales as the basis. Each party, Mr. Lownsdale and Mr. Coffin, figuring for himself, and stating the account in their own way. There were some private accounts between Lownsdale and Coffin, which, I think, had something to do with the settlement in balancing the accounts between them, but the account of sales appears on page eight (8) of the book, which is now here for inspection. I figured up the accounts myself, mostly, in the book, but Lownsdale and Coffin preferred to make their own calculations and their own statements of accounts on separate pieces of paper. On page two, (2,) in Mr. Coffin's account, he is charged $3,000 for block seventy-nine, (79,) and that page embraces the settlement with him, balanced in his own handwriting, at $10,299 60-100 due from him to the town. Mr. Lownsdale's account, on page three, (3,) figured up $3,900 50-100, due from him to the town. My own account, on page seventeen, (17,) shows $7,857.50 due to

180 the town on that page, and on the same page to be credited by $1,574.99½, which accounts were transferred to page eighteen, (18,) and the balance was struck as against myself, including my share of the proceeds of sales, deducting the $1,574.99½ from $7,932.00, left a balance of $6,357.00; the same account take my dividend to be $6,357 11-100.

(The whole of this answer is objected to because not responsive to the question.)

Adjourned until Saturday, August 3d, at 9 o'clock a. m.

Parties met pursuant to adjournment, at 9 o'clock a. m., and again adjourned until 1 o'clock p. m.

SATURDAY, *August* 3, 1872—1 o'clock p. m.

Examination resumed:

Question 15. I will again ask you whether the book which you have

produced, and which as you say contains your account of sales, made by you during the absence of Mr. Lownsdale, shows a settlement of that account so far as the price of block 81 is concerned?

Answer. I think it does.

16. Point me to the page.

Ans. On page 8, right-hand column, I am charged with a sale of town-lots. On the sixteenth line of that column I am charged with $2,000 for block 81; the whole amount of sales stated on that page of $26,347. On the left-hand column of page 8 are my credits, standing against the account of sales, amounting to $26,347. On page 9 is a new account with the town and the final settlement.

17. Is there any date to any of the items on page 8, debtor or credit?

Ans. There is not. There was a statement of the account taken from informal memorandums and made up by me, except the footing, before we entered into the settlement. Some corrections were made at the time, to correspond with the manner of stating the accounts made by Mr. Lownsdale and Mr. Coffin on separate pieces of paper. There were the two other accounts to which I have referred on pages 17 and 18.

18. Was this account on page 8 an account between yourself and the town of Portland; or who was it between?

181 Ans. It was between myself and the town of Portland, whilst I was acting as the agent of all the parties.

19. How happens it, then, that while this account shows a sale of lots by you to the amount of $26,302, and upon the opposite leaf of the account you appear to be credited $10,522.50 for sales of lots to Coffin, and $3,900 for sales of lots to Lownsdale, when there does not appear to have been any sales of lots to Lownsdale or Coffin except a block to Lownsdale for $3,000, and another charge of $500 to Lownsdale, and a single transaction with Coffin of $3,000?

(Objected to as immaterial and incompetent, because the question is an attempt of the counsel to introduce his statements of what he claims appears on a document not in the case.)

Ans. The account of Coffin, and also of Lownsdale, and of Chapman, as appears on that page, was a balance agreed upon by them at the time; some other items of charge against them being furnished at the time of the calculation, and an alteration made in the account accordingly. By reference to the accounts of Lownsdale and Coffin those items will appear. On page 3 Mr. Lownsdale's account was made up to $3,900 and that was a credit to me; that account includes the $5,000 for block 78. Coffin's account, as stated on page 8, was a balance, and included other accounts of lots.

20. What date were the accounts on page 8 set down?

(Objected to as immaterial.)

Ans. As I stated before, I made that statement of the sales of lots a day or two, or a few days, before our settlement, and the dates were not stated.

21. Was that account all written at the same time on page 8?

Ans. It was not.

22. State at how many different times it was written.

(Objected to as immaterial.)

Ans. I think but at one time besides when I first stated it, and that was while we were settling, or at that sitting.

23. Was the account on page 3 of D. H. Lownsdale's all written at the dates it purports to bear, except the final footing up?

182 Ans. I am not able to say. It was all written before and

at the sitting, as I see the figures of one footing up to be in the handwriting of either Mr. Lownsdale or Mr. Coffin, as I think; the figures 3,555 57 seem to be corrections of one footing up of Mr. Lownsdale's account, and I believe them to be the handwriting of Mr. Lownsdale; they may be Mr. Coffin's; I do not believe them to be mine; and that account shows the $900 additional for the block.

24. This book appears to contain a record of the lots and blocks in the town of Portland; how high a numbered block is there upon this book as belonging to that town upon any town-plat of the town of Portland; is there any number higher than 73?

(Objected to as immaterial and incompetent, because the book does not appear to contain any such thing.)

Ans. There was the beginning of a record of the sales of lots in the town-plat of the town-plat of the town of Portland in this book, when Mr. Lownsdale handed it over to me; it was in the handwriting of Mr. Kenzie, Mr. Lownsdale's clerk, and nearly all the entries were made in it either before it come into my hands by said clerk; very few of them were made by myself afterwards. At the time I come into the town, I am not sure that there was any numbered above 73, certainly not upon this book.

25. In whose handwriting are the entries on page 2 after the Feb'y in the margin?

(Objected to as immaterial.)

Ans. Part of them are mine, part of them are Mr. McKenzie's, who opened the accounts for me.

26. How many of the entries are in Mr. McKenzie's handwriting after that date?

(Objected as incompetent and immaterial.)

Ans. Five or six.

27. In whose handwriting are the entries on page 3?

(Objected to as incompetent and immaterial.)

Ans. Part my own, and part the said McKenzie's.

28. Were these entries made by McKenzie while you had possession of the book?

(Objected to as incompetent and immaterial.)

Ans. I think they were.

29. You have said that on page 9 of this book there was a final
183 settlement between the parties; is that all there is to show such a settlement?

(Objected to as incompetent and immaterial.)

Ans. That is not all; there was a due-bill, and I think a receipt, connected with it; there would, on this page, there would be due to me from Mr. Lownsdale $23.16⅔, that was charged in private account, and in that private account, my impression is, there was a small balance due to Mr. Lownsdale, for which I executed to him, I believe, my due-bill. I have not seen the paper for a number of years, but my impression is very clear that it contains a statement by Mr. Lownsdale that it was a settlement in full of all town accounts, and so ended the chapter of our transaction in reference to my agency in the sale of lots; I think I have the paper yet.

30. Will you produce that paper so that it may be attached to your deposition in this case, and used in evidence?

(Objected to as above.)

Ans. It is now twenty minutes past two o'clock, on Saturday, and it is known to the counsel that I expect to leave on next Monday, to be absent for some time, but if counsel deems it proper to subpœna me to

produce it, I will do so on the hearing of this cause; it might take me some hours looking over old papers to find it; I might have to go to my residence, a distance of a mile or more.

(Plaintiff objects to that portion of the answer to interrogatory number 29, as refers to the contents of *of* a receipt, without the production of the original paper.)

31. Is there any date to this alleged settlement on page 9; and, if not, at what date was it actually made?

(Objected to as immaterial.)

Ans. I cannot give the date from memory; I think it was not long after, if it was not on the day of the other settlement; I think it must have been at least before the month of June, of 1850; of the dates, however, I will not undertake to state with certainty. The due-bill, however, to which I have referred will show.

32. In settling that account of over $26,000, which appears on page 8, between yourself and Mr. Coffin, and Mr. Lownsdale, were there receipts given to and received by each from the others?

(Objected to as immaterial.)

Ans. I am not certain that I took any receipt until the final set-
184 tlement, which embraced only about $400 of debit and $350 of credit. As between Mr. Coffin and Lownsdale, the money was coming from Coffin and due to Lownsdale; there was neither money coming to me or payable by me, at the first and principal settlement, to any large amount at least; according to my best recollection, none. I think I did know how Lownsdale and Coffin settled those matters by mutual consent; the payment of the sum by Coffin, and the receipt of it by Lownsdale, was left for them to settle; what the receipts, if any, between them, my memory does not serve me to state, if I ever knew.

33. Did you take a receipt from Coffin or Lownsdale, on the settlement of that $26,000 account?

(Objected to as immaterial.)

Ans. I do not remember that I did.

34. State if that book shows all the property you sold belonging to Lownsdale, or in which he had an interest under that power of attorney, and during the time that he was absent in San Francisco, as you have stated in your direct examination.

(Objected to as incompetent and immaterial, and because the witness has not stated any such thing.)

Ans. I believe it does; I hav'n't a doubt but it does. My attention has been called to that point a great many times, and I have sought to find out if I had omitted to state the sale of a single lot, and I have never discovered that I did.

35. Is that the full account on page 8?

(Objected to as incompetent and immaterial.)

Ans. The accounts are on several pages, which I have given already.

36. Is there in that book any other list of the lots so'd during the absence of Mr. Lownsdale, except on page 8? If so, point out the page.

(Objected to as immaterial because the question has already been fully answered.)

Ans. The book is here before you; you can examine it to your heart's content. If there is any particular lot about which I am interrogated that ought to be stated there, I will search for it.

37. Will you examine the book and state to me whether there is any mention of sales of lots by you on any other page except page 8?

(Objected to as immaterial.)

185 Ans. On page 2, Mr. Coffin is charged with a sale of block 79, $3,000; on page 3, Daniel H. Lownsdale is charged with a sale of fractional block 78, $3,000; on page 17, I am charged with the sale of lots to Stevens, $362.50; sale of lots to Perkins, $550; sale of lots to Chapman, Hastings and Baker, $900; sale of lots to Hobbs, $300; sale of lots to W. Whimple, $1,000; Haines, $200; self, block 81, $2,000; self again, $200; on page 20 there is a charge of $900 for sale of lots. I think there may be some other accounts.

38. Will you leave that book with the examiner to be used as evidence in this case?

Ans. I don't think I will.

39. Will you leave it with him in order that copies may be made of the pages referred to in your testimony?

Ans. I will not; but, if it is required by the court, I will bring it in on the hearing.

40. You have stated in your direct examination that you had a conversation with Mr. Stark about the alleged modification of the agreement between Stark and Lownsdale, on the 1st of March, 1850. What time did that conversation take place, and who were present?

Ans. I stated that I had a conversation with him. I should have said that he stated, in my presence, the time was 1852 or 1853; I do not know that I could tell the time nearer. I believe it was in 1852; it was in one of those years. Mr. Lownsdale was present; I think Mr. Coffin was present; either John B. Preston or A. P. Miller, one or both of them; and, I am not certain, but I believe, Aaron E. Waite; I don't remember who else; there might have been somebody else.

41. Where did this conversation take place, or where did you hear it so stated by Mr. Stark, as you have testified in your direct examination?

Ans. At the land-office in Oregon City.

42. Was it at the time that the paper, called the escrow, being an agreement between yourself, Coffin and Lownsdale, in regard to this claim, was made; or was it at the time when final proof was made to any portion of the Portland land-claim?

Ans. I think neither; but the truth lies between th tw

186 43. When and where did you hear that conversation referred to in your answer to direct interrogatory number 41?

Ans. It was at the time and place referred to in my previous answer.

44. Did you ever hear Mr. Stark talk upon that subject more than once?

Ans. I have often heard him speak on that subject.

W. W. CHAPMAN.

AUGUST 2, 1872.

WILLIAM STRONG, being duly sworn, deposes as follows:

Question 1. State your name and occupation.

Answer. William Strong; an attorney at law.

2. Look at the papers now shown to you, and state what they purport to be, in whose custody they now are; and, if your own, how you came in possession of them, and when.

Ans. One of them purports to be a power of attorney from Benjamin Stark to John H. Couch, dated the 26th day of September, 1849; the other purports to be a letter of instructions in regard to the power of attorney, and bears the same date. They are now in my possession, as the attorney of Benj. Stark. They came into my possession, originally, quite a number of years ago, I think in 1863. My recollection is, that they were handed to me by Benj. Stark for the purpose of using in some law-

suit. When the occasion for their use was over, I deposited them with Mr. Ladd, the banker, with other papers in a safe. I have taken them out once or twice since to use them for legal purposes, returning them when through to Mr. Ladd; and, after the subpœna was served on me to-day, to produce them, I called upon him and got them and brought them here; and they were folded as they are now, with the letter of instructions on the outside, and the indorsement of the character of the papers upon them as appears here.

3. Have you seen Benj. Stark write, and do you know his handwriting?

Ans. I have seen him write frequently, and know his handwriting.

4. In whose handwriting is the body and signature of that power of attorney and letter?

Ans. I think it is all, the body and signatures, in the hand-
187 writing of Benj. Stark, except the signature of Wm. Seton Ogden, and the indorsement on the back.

5. Please file that power of attorney and letter as part of your deposition, to be indorsed "Exhibits A and B."

Ans. I am unwilling to do so, because they are private property, and may be used in other cases; but I am willing that copies may be made by the examiner and attached.

(The parties, by their respective counsel, agree that such copies hereto attached, marked "Exhibits A and B," made by the examiner, may be used in evidence, subject only to such objections as might be made to the originals after proving their execution as above.)

6. In whose handwriting is the indorsement on the back?

Ans. I think the words "Couch's power of atty.," and the character "&," are in my handwriting; and the words "instructions" and "revoked" in the handwriting of John H. Couch; but I am not positive that any of it is in my handwriting, nor would I be willing to swear that any of it is in the handwriting of Mr. Couch, but I think the words I have named are. I know that the words "instruction" and "revoked" are not in my handwriting, nor are they in the handwriting of any person that I know, except Capt. Couch.

Cross-examined:

Question 1. When did you first observe the indorsement of the words "Couch's power of atty.," and "instructions revoked," as they now exist upon that paper, marked "Exhibit B;" I mean the original of Exhibit B?

Answer. I have no recollection of having seen it in any other form—of having seen the paper when the indorsement was not upon it.

WM. STRONG.

EXHIBIT A.

Copy of power of attorney—Stark to Couch.

Know all men by these presents that I, Benjamin Stark, merchant, resident of Portland, in the Territory of Oregon, do hereby make, constitute, and appoint John H. Couch, of Portland aforesaid, (merchant, and my mercantile partner,) my true and lawful attorney, for me,
188 and in my stead, to do any and all acts, during my temporary absence from this Territory, which I might myself lawfully do were I personally present, hereby ratifying and confirming all and every act which my said attorney shall so perform, and, by these presents,

recalling and annulling all authority conflicting with this letter of attorney, which I have previously given to any person or persons whatsoever.

Witness my hand and seal, at Portland, this 26th day of September, A. D. 1849.

BENJ. STARK. [SEAL.]

Witness:
WM. SETON OGDEN.

EXHIBIT B.

Copy of letter from Stark to Couch.

JOHN H. COUCH, Esq.:

SIR: With this you have from me a power of attorney of the fullest character, under which, during my absence from the Territory, you can look out for all my interests, particularly with reference to my interest in the Portland town-claim.

As regards the claim, I wish you to notify Mr. Coffin, as soon as he returns, of the true position of things, and, if possible, have the difficulty concerning my undivided half settled. I have spoken to Jas. W. Nesmith, esq., and to Mr. Pritchard, secretary of state, and they will both hold themselves in readiness to act as my counsel.

Should you find, after the return of Mr. Coffin, that the matter can be brought no nearer to a settlement upon just and equitable principles, I wish you to submit to them, (Nesmith and Pritchard,) all my papers, a part of which you have herewith, and others which you can have from A. L. Lovejoy, esq., upon application to him, and direct them to pursue such measures as they deem most judicious.

Mr. Lovejoy can give some valuable hints to my counsel, as he was formerly my agent. It will be necessary for you to advise the public of your appointment as my attorney during my absence. The proper kind of notice to publish, Nesmith or Pritchard can prepare.

Wishing you may have but little trouble with my affairs, yet
189 trusting that you will battle to the utmost for my rights if necessary, I am yours, affectionately,

BENJ. STARK.

PORTLAND, 26*th September*, 1849.

(Indorsed on back of letter:) "Couch's power of attorney and instructions revoked."

AUGUST 13, 1872.

L. M. STARR
v.
BENJAMIN STARK. } In equity.

This day comes the complainant, by Mr. J. N. Dolph, and the defendant, by Mr. E. C. Bronaugh, in pursuance of notice, and proceeded to take testimony on part of the complainant, as follows—Ralph Wilcox, examiner:

B. F. SMITH, being duly sworn, deposes as follows:

Question 1. State your name, residence, and occupation.

Answer. Benjamin F. Smith; Portland, Oregon; occupation, merchandising.

2. State how long you have resided in Portland.

I arrived here on the 23d of August, 1851; have lived here since. This has been my home.

3. State whether or not you was ever acquainted with Benjamin Stark; if so, when you became acquainted with him, and how long, and where you knew him.

Ans. In Portland, soon after I arrived here; have known him ever since.

4. State whether or not you know the property described in the complaint as fractional block 81, in the city of Portland; and, if so, when you first knew that property.

Ans. I do, sir; soon after I arrived here in '51.

5. State, if you know, what improvements were upon that property at that time, and who was occupying it.

(Objected to as immaterial.)

Ans. I know that the Messrs. Starrs had a tin-shop on it, and I think one or two other buildings on it; one a grocery-store.

6. State whether or not you had any conversation with Benjamin Stark, the defendant, with regard to this block eighty-one prior
190 to or immediately after the issuing of his patent for his land-claim; and, if so, state when and where that conversation or conversations occurred, and what they were.

(Objected to as immaterial.)

Ans. To the best of my recollection, it was in May, 1852, down on Front street. Mr. Stark told me that he expected to get a patent; and I had a little trouble with the city about building, and he said, "You go on and fight them; when I get a patent I will give you, Mr. Dennison, Mr. Colman, and the Starrs a title, without any expense to any one except the making of the deeds." I think it was Mr. Colman; at any rate he said that all in blocks eighty and eighty-one should have deeds. The day he got his patent he came up street, and at the corner of Stark he said, "There is my patent; it has just come." He did not show me the patent, only the envelop', and said, "All you people that come honestly by your property shall have a deed from me and my wife, as I have stated to you before."

(All that portion of answer referring to property not in controversy in this suit objected to as not responsive to the question, and immaterial.)

7. State about when this last conversation took place, as near as you can recollect.

Ans. I don't recollect the date, as I said before; it was when he got his patent.

8. Where was your property situated that you had the difficulty about with the city?

(Ob. to as immaterial.)

Ans. Block eighty, north ½ of lot two.

9. State who was occupying block eighty-one, if you recollect, at the time of the first conversation.

(Same objection.)

Ans. If my memory serves me right, I think it was Jo. Cleaver, Messrs. Starrs, and Mr. Hutchins.

Cross-examination:

Question 1. On what part of block eighty-one was the tin-shop which you say was there in 1851?

Answer. I can't recollect which lot it was on.

2. What kind of a building was it?

Ans. A common wooden building; I don't recollect the size; a small building; don't recollect whether two-story.

3. Was it of rough plank, or dressed and painted?

Ans. It is my opinion that it was rough; that is to the best of my recollection.

191 4. Was it weatherboarded, or upright plank?

Ans. I recollect that the lower building, a small square building, was weatherboarded with rough boards.

5. How many other buildings beside the tin-shop were on the block at that time?

Ans. I can't recollect but two beside the tin-shop.

6. Were they of rough planks also?

Ans. They were all rough buildings, to my best recollection.

7. How did the other two buildings compare in size with the tin-shop?

Ans. The two buildings on the south side were the longest.

8. About what size were they?

Ans. I can't recollect.

9. Were they single or double story?

Ans. The furniture-warehouse was double; of the others I am not sure.

10. Do you recollect whether they were covered with shingles or clapboards or shakes, as some call them?

And. I don't recollect.

11. Who else, if any one, was present at either of the conversations you have stated as having taken place between yourself and Stark?

Ans. No one.

12. Have you ever got title from Stark to the north ½ of lot two in block eighty?

(Objected to as immaterial and incompetent.)

Ans. I have; signed by him and his wife.

13. When?

Ans. In 1871.

14. Did you pay him anything, and, if so, what, for that title?

(Objected to as incompetent and immaterial.)

Ans. $2,000.

AUGUST 3, 1872.

15. Did you ever relate to L. M. Starr, either of the conversations which you say took place between you and Stark; and, if so, when and where?

Ans. I did, I think, in May, 1852, and at the time he got his patent; I can't recollect where.

192 16. Was there any one else present, if so, who, on either occasion of your telling Starr of these conversations?

Ans. I have no recollection of anybody.

17. What is the state of feeling between yourself and Benjamin Stark?

Ans. Always friendly.

18. Did you tell Cleaver or Hutchins of these conversations between yourself and Stark, which you have related?

Ans. No; I have no recollection.

19. If Cleaver and Hutchins were occupying portions of block eighty-one in 1852, why did you tell Starr and not them of these conversations?

Ans. I never was but very little acquainted with them.

20. Did you object to paying Stark the $2,000 for your title, after what he had said to you?

(Objected to as immaterial.)

Ans. I tried to get it as cheap as I could, and we compromised it by me paying him $2,000.

21. Did you not have any ill feeling toward Stark for making you pay for the property after having told you what you say he did?

(Same objection as last.)

Ans. We always met sociably, and I told him right to his head that he hadn't done as he agreed by me. He laughed it off in his joking way.

22. Do you feel kindly towards Stark in regard to that matter now?

Ans. I speak to him as kindly as I ever did, but I shall always tell him that he didn't do as he agreed.

Re-examination:

Question. 1. What was the value of the north ½ of lot two in block eighty, at the time you paid Stark $2,000 to confirm your title, and for him and his wife to make you a deed?

(Objected to as immaterial.)

Answer. We valued it at $4,000.

2. How came you to pay him $2,000 for it?

Ans. Because I couldn't get it for any less.

BENJ. F. SMITH.

WILLIAM H. BENNETT, being duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation.

193 Answer. Name, W. H. Bennett; age, 49; residence, Portland, Oregon; work in the custom-house at present.

2. State how long you have resided in Oregon and at what places.

Ans. Since November, 1845; at Portland, and Tualitin Plains, Washington County.

3. State whether or not you were ever sheriff of Washington County; and, if so, between what dates and how long?

(Objected to as immaterial.)

Ans. I was; from 1849 to 1854.

4. What territory did what was then Washington County embrace?

Ans. It embraced Multnomah County, what is west side of the Willamette River; Columbia County, and a portion of Clackamas County on west side of Willamette, and what is now Washington County.

5. State whether or not as sheriff of Washington County you ever had in your hands an execution issued upon a judgment of Zachariah C. Norton, plaintiff, against Winter and Latimer, defendants; and, if so, state as near as you can from your recollection or memorandum made by you at the time that you had knowledge of the facts, the date of that execution, by whom it was issued and how tested, and the contents of that execution.

(Objected to as immaterial and not the best evidence.)

Ans. I had; I think the execution was dated some time in May, 1852; it was issued by Ralph Wilcox, clerk of the district court of Washington County, under the seal of the court, commanding me to levy upon all the real and personal property of Winter and Latimer, a regular form of an execution in the suit of Z. C. Norton, against Winter and Latimer, for me to make the sum of $4,000 and costs.

6. Look at the paper now shown to you and state whose signature is attached to it; the paper is exhibit number five attached to stipulation filed Aug. 1, 1872.

(Objected to as immaterial and not the best evidence.)

Ans. It is my signature; W. H. Bennett, sheriff, Washington County.

194 7. State whether or not that paper was delivered; and, if so, to whom?

(Same objection as immaterial.)

Ans. It was delivered to W. H. Barnhart.

8. Please refresh your recollection from that instrument and state the exact date of that execution, the amount of the judgment, and what was done under the execution.

(Objected to as immaterial and not best evidence.)

Ans. It was dated the 23d day of June, 1852; for the sum of $4,486.86 and $88.80 costs; by virtue of the same, lot one in block eighty-one was advertised, and improvements thereon. I sold said property, on the 24th day of July, 1852, to Wm. H. Barnhart, for the sum of $260, he being the highest bidder.

9. State, if you know, whether or not a return of the proceedings had under that execution was made on the execution; and, if so, what was done with the execution and return?

(Objected to as immaterial and not best evidence.)

Ans. A proper return was made on it, and returned into the clerk's office of Washington County, of the proceedings in that matter.

10. State whether or not you are acquainted with Benjamin Stark; and, if so, how long you have known him, and where?

Ans. I am acquainted with him since December, 1845, at Oregon City and Portland.

11. State where Benjamin Stark resided from March, 1850, until the time he was appointed United States Senator?

Ans. At Portland.

12. State, if you know, who was Stark's agent from the time he left Portland (above referred to) for a number of years thereafter?

(Objected to as immaterial and not the best evidence.)

Ans. W. S. Ladd.

13. State how W. S. Ladd's place of business was situated, in reference to block eighty-one, during that time.

(Objected to the same as last.)

Ans. About two blocks above, on same street—in plain sight of it.

14. State, if you know, in general terms how and by whom
195 block eighty-one was used and occupied from March, 1850?

(Objected to as immaterial.)

Ans. In the fall of 1850 Mr. Starr had a tin-shop on it and Mr. Cleaver a furniture-store. I think Mr. Hutchins was doing business on it also; I am not positive; he was on it sometimes. Sherlock had a saddler-shop and livery-stable on it since. I don't recollect many parties' names; the Youngs had a marble-shop.

15. State as near as you can the contents of the return on the execution referred to in your testimony.

(Objected to as immaterial and not the best evidence.)

Ans. As near as I can state was, by virtue of the within execution, I, William H. Bennett, sheriff of Washington County, have levied upon lot one, in block eighty-one, in the city of Portland, as the property of Winter & Latimer; advertised the same by posting up notices, and selling the same to the highest bidder for cash—to W. H. Barnhart for the sum of $280.80. That is as nigh as I can recollect; I am not positive about it, it was so long ago.

16. What is your recollection as to whether or not the return on that execution was in the usual form?

Ans. The usual form used at that time; I knew no other.

17. Can you recollect whether or not that return stated the number of notices and the time for which they had been posted?

(Same objection as last.)

Ans. I do not.

18. Can you recollect what that notice specified in regard to publication of notice?

(Same objection as last.)

Ans. No, I do not.

19. State whether or not, according to your best recollection, that return showed that due notice had been given according to law.

(Same objection as last.)

Ans. I think it did.

Cross-examination:

Question 1. How long has it been since you saw the execution about which you have been testifying?

Answer. I have not seen it since the return of the execution in 1852, about twenty years ago, to my knowledge.

196 2. Did you, in 1852, as sheriff, execute and return any other executions; and, if so, about how many?

Ans. I recollect one, in case of A. P. Dennison against Z. C. Norton, for property where Pittock now is.

3. Do you swear to the fact that a return was indorsed on that execution, and its form and contents, from actual memory of those facts, or from presumption that you made such return because it was your duty by law so to do?

Ans. I only swear from recollection; that was my usual form of making a return; I know that a return was made on the execution and returned into the office.

4. If that return was not in your usual form, can you now state from memory wherein it varied from that form?

Ans. I cannot.

5. Can you swear positively that that return was in the usual form used by you?

Ans. I think it was, as nigh as I can recollect.

6. Did you not this morning, before beginning to testify, go into the back room of this office with Mr. Dolph, plaintiff's attorney, and examine closely the deed marked "Exhibit 5," about which you have testified?

Ans. I went into the room and read the deed.

7. Did you not, in answer to interrogatory eight of your direct examination, hold in your hand and read from that deed the dates, amounts, names of parties, and other particulars given by you in answer to said interrogatory?

Ans. I did.

8. Have you any distinct recollection as to those dates, amounts, and other particulars apart from what you read from that deed?

Ans. The only distinct recollection that I have is the names of the parties; the amounts and dates I couldn't recollect without it.

9. What kind of a building was the tin-shop which you say Starr occupied on block eighty-one, in the fall of 1850?

Ans. It was a rough wooden building of one story.

10. What lot and block was it on?

Ans. It was block eighty-one; I think it was lot three; am not positive; either that or south ½ of two.

197 11. Was there any building on lot one?

Ans. I don't think there was; am not positive about that.

12. Which way from the tin-shop were the buildings that were occupied by Cleaver and Hutchins?

Ans. I think they were south.

13. What kind of buildings were they?

Ans. The building that Cleaver occupied was a two-story rough wooden building. I think the one Hutchins occupied was a rough one-story wooden building.

14. Do you recollect how they were covered?

Ans. They were covered by shingles; the same buildings are there now.

15. About what were those buildings worth when new?

Ans. I suppose the building that Starr was in was about $800 or $1,000; the building of Cleaver, about $1,500; the building that Hutchins was in was about the same as Starr's, I think.

Re-examination:

Question 1. Were those buildings weather-boarded and painted?

Answer. The fronts were, I think.

W. H. BENNETT.

WM. SETON OGDEN, being duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Wm. S. Ogden; age, forty-four; Portland; book-keeper and accountant.

2. Look at the paper now shown to you and state in whose handwriting the signature Wm. Seton Ogden is.

(Objected to as immaterial.)

Ans. It is in my handwriting.

3. State what that paper purports to be, and by whom and in whose presence, and where it was signed, and under what circumstances.

(Objected to as immaterial and because the paper speaks for itself.)

Ans. It purports to be a general power of attorney from Benjamin Stark to John H. Couch. It was signed by Wm. Seton Ogden, myself, as witness, and signed by Benjamin Stark, in Portland, on the 26th day of September, 1849. Mr. Stark was about leaving for California. He wrote out this document in the old log store of Couch & Co.,

198 where we did business at that time, at our desk at the west end of the store, and when he went away he left it with Couch.

WM. SETON OGDEN.

The paper shown the last witness, as above stated, is the power of attorney referred to in William Strong's deposition.

RALPH WILCOX, *Examiner.*

A. B. STUART, being duly sworn, deposes as follows:

Question 1. State whether or not you are acquainted with Benjamin Stark and A. M. and L. M. Starr, and how have you known them.

Answer. I am. I have known Benjamin Stark since 1849 or '50; saw him first in San Francisco; have known the Starrs since the fall of 1850 or spring of 1851.

2. State whether or not you ever heard any conversations between

Benjamin Stark and L. M. and A. M. Starr in relation to block eighty-one in the city of Portland, (called fractional block eighty-one in the pleadings,) or any portion of it; and, if so, when and where was that conversation or those conversations, and what were they?

(Objected to as immaterial.)

Ans. I did heard a conversation between Mr. Stark and Mr. Starr at Mr. Starr's office, at some two or three different times, in regard to the giving a deed to the property. I heard him tell Mr. Starr that as soon as he got a patent for it he would give him a deed for it. The last time I heard him say so he came into the office appearing to be pleased and told Starr he was ready to give a deed now.

3. What property?

Ans. This lot down here, eighty-one, I think, on the levee.

Cross-examination:

Question 1. Was this last conversation before or after Stark got his patent?

Answer. Some of it before, and the last, I think, about the time he received it.

2. Have you stated all that you recollect as being said in that last conversation?

Ans. That is about all. There was other conversation held in the office—all about the property; I don't recollect; it was so long ago I can't call it to mind now.

3. In what year was this last conversation?

199 Ans. I think in 1861 or '2; I won't be positive about the year.

4. Who else, if any one, was present at that conversation beside yourself, Stark, and Starr?

Ans. Some two or three others, but who I cannot say; there was always a number in there, and I didn't pay any attention.

6. In what occupation was you employed at that time?

Ans. I think I was in the pork-packing business at that time for Mr. Starr, or for myself, I don't recollect which.

6. Was the number of block eighty-one mentioned in that conversation?

Ans. It alluded to his property generally, that Mr. Stark would give a deed to.

7. How much and how long and when have you been in Mr. Starr's employ?

That I can't tell exactly. I worked for him in the packing business, and then I worked for myself, and was acting some time under him as deputy sheriff prior to packing for him.

8. What is your occupation at present?

Ans. Deputy United States marshal and bailiff in United States courts and deputy county assessor.

9. Who did you last talk with, and when, about the testimony that you would give in this case?

Ans. Mr. Starr asked me if I recollected any of the conversations in the office about Stark giving deeds. I told him I did; it was a day or two ago.

10. Did you and Starr ever have any conversation in regard to the matter prior to that time?

Ans. We did not.

A. B. STUART.

SHUBRICK NORRIS, being duly sworn, deposes as follows:

Question 1. State your age, residence, and occupation.

Answer. Portland, Oregon; clerk; age, forty-one.

3. State how long you have resided in the city of Portland.

Ans. I have resided here since the spring of 1850 continuously, except about two years from September, 1862, to September, 1864.

3. In what business, and with whom, and under what name, and where were you engaged since the spring of 1850 to the spring of 1853?

200 Ans. I was in business here in connection with Winter & Latimer, from the spring of 1850 to '53 or '4. I was interested with them as partner in Portland. I conducted the business in Portland.

4. State whether or not the partnership, at any time, purchased any part of block eighty-one; if so, when; of whom; whose money, and how much, was paid; to whom the deed was made; and why it was made, and what was the property so purchased?

(Objected to as immaterial and not best evidence.)

Ans. In the early part of 1851 they purchased lot one, in block eighty-one, in the name of Winter & Latimer, of W. W. Chapman; consideration was $600, I think. Paid out of money belonging to myself and Winter & Latimer.

5. By whom was the deed executed, to whom delivered, and what has become of it?

(Objected to as immaterial.)

Ans. The deed was executed by W. W. Chapman, and delivered to me. I had it recorded in the then Washington County records. The deed was either stolen or lost, with other papers belonging to myself and the firm, in 1854 or '5. I have never seen it since that time.

6. State whether or not Winter & Latimer took possession of the property; if so, when; what improvements they made, if any; and who next came into possession of that property, and how?

(Objected to as immaterial.)

Ans. In the spring of 1851 they built a warehouse on part of the ground, and occupied it as a store-house; it was afterwards sold on execution in favor of Z. C. Norton against Winter & Latimer, and purchased by W. H. Barnhart.

7. State when Barnhart took possession, if at all; how long he held it; how he occupied it; and, if you know, who succeeded him in the possession of the property, and by what transaction?

(Objected to as immaterial.)

Ans. Barnhart took possession of it immediately after he purchased it, and used it as a store-house. He kept possession of it until about the time he sold it to C. A. Eastman.

8. Who made the sale to Eastman?

(Same objection.)

Ans. I sold it, under a power of attorney from Barnhart.

201 9. How much did you get and what did you do with the money?

(Same objection.)

Ans. The sale was in consideration of an indebtedness from Barnhart to Eastman. The power of attorney was left me for the purpose of making the sale on account of that indebtedness.

(That part of the answer referring to the power of attorney and the purpose for which it was left is objected to as not responsive to the question and not the best evidence.)

10. What has become of the original of that power of attorney?

Ans. My impression is that it was destroyed. I have not got it, and haven't seen it for a number of years.

11. State whether you knew Benjamin Stark; when you became acquainted with him; how long you knew him; where he resided from the time you purchased that property until it was sold to Eastman; whether or not he knew of the improvement and occupation by Winter & Latimer and Barnhart; and whether or not he made any objection to the improvement or occupation of that property during that time.

(Objected to as immaterial.)

Ans. I knew Benjamin Stark first in January, 1850, in San Francisco; afterwards in Portland, Oregon, in 1850–'51 to 1860. I think he resided in Portland, Oregon; I don't remember when he came here to reside, whether in 1850 or fore part of 1851. I presume he knew of the occupation of that property; he was here at that time, and passed back and forth by there frequently. I heard of no objection by him.

11. State whether or not you was ever clerk of Multnomah County; if so, state whether you ever recorded the original power of attorney and deed by which you sold lot one, in block eighty-one, to Eastman.

Ans. I was clerk and recorder of Multnomah County, and recorded the orginal power of attorney and deed.

15. State whether you recorded them word for word and figure for figure.

(Objected to as immaterial and not the best evidence.)

Ans. I did, to the best of my recollection; that was my way of doing business.

202 Cross-examination:

Question 1. Have you at hand a copy of that power of attorney from Barnhart to yourself?

Answer. I have.

2. Will you please to give it to the examiner and let the same be attached to your deposition as Exhibit A?

Ans. I will.

3. Were there any witnesses to the deed executed by W. W. Chapman to Winter & Latimer; and, if so, who were they?

Ans. My impression is that there were two witnesses, but what their names were I don't remember.

4. What was the price paid by Eastman to Barnhart for that property?

Ans. I don't now remember the amount of the consideration.

5. Was the consideration correctly stated by you in the deed?

Ans. It was, to the best of my recollection and belief.

6. Was the warehouse on the lot at that time?

Ans. It was.

SHUBRICK NORRIS.

JACKSON POWELL, being duly sworn, testifies as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Jackson Powell; fifty-six; Multnomah County, Oregon; farmer.

2. State whether or not you ever owned any part of block eighty-one, in the city of Portland; and, if so, when, and of whom did you purchase, and how much you paid.

(Objected to as immaterial and not the best evidence.)

Ans. I did. I purchased it in the winter of 1850 or 1851, of W. W.

Chapman. I paid $1,000 a lot for two lots. I purchased, I think, lots three and four.

3. State whether or not you were ever in the possession of any part of block eighty-one, the property described in the complaint; and, if so, what part, and when did you go into possession, and how long did you remain in possession; and what, if any, improvements did you make upon such property while so in possession?

(Objected to as immaterial.)

203 Ans. I was; lots three and four. I went into possession in the spring of 1851. I remained in possession until I sold out. I don't recollect how long. I built a house, twenty by forty, two stories high, on said property.

4. When did you build the house and what was the cost?

(Objected to as immaterial.)

Ans. I built it in 1851. It cost about $1,100.

5. How was the house occupied while you owned it and after you sold out?

(Objected to as immaterial.)

Ans. A man by the name of Reed rented it while I owned it. He sold groceries in it; and then Birdseye, a liquor-dealer, had it after that.

6. Are you acquainted with Benjamin Stark; and, if so, when did you become acquainted with him?

Ans. I knew him. I became acquainted with him in 1851, I think.

7. Where was he when Reed and Birdseye occupied the house?

(Objected to as immaterial.)

Ans. He was in Portland.

8. Where was he when you was building the house?

(Objected to as immaterial.)

Ans. I think he was here in Portland.

9. State whether or not Mr. Stark ever made any claim to said property, while you were occupying it, or others under you, or ever made any objections to your improving or occupying it.

(Objected to as immaterial.)

Ans. He did not.

Cross-examination:

Question 1. Is that same house standing on that property yet?

Answer. I think it is, unless it has been removed very lately.

JACKSON POWELL.

JAMES BURKE, being duly sworn, testifies as follows:

Question 1. State your name, age, residence, and occupation.

Answer. James Burke; past sixty-two; East Portland, Oregon; hotel-keeper at present.

2. State whether or not you are acquainted with Benjamin

204 Stark; and, if so, when and where did you become acquainted with him?

Ans. I am. I became acquainted with him in 1854, in Portland, Oregon.

3. Do you know the property described in the complaint, (block eighty-one, or fractional block eighty-one;) and, if so, how long have you known it?

Ans. I knew the property. Joseph Cleaver had a cabinet-shop on it. It was on Front street, near Oak. It was on the levee. I suppose it is the property described in the complaint.

4. What improvements have been made on the property—on the river side of the property you have reference to?

Ans. There was a two-story frame house on the corner. There was a one-story frame house next adjoining on the property, part of the time occupied by a cabinet-shop and since that time for different uses. There has been a wall put up on the river side, a stone wall.

5. State whether or not this is the property claimed by A. M. and L. M. Starr.

(Objected to as immaterial and leading.)

Ans. It was claimed by them at that time.

6. State whether or not you ever heard Benjamin Stark make any statement in regard to the title of that property; and, if so, when and where and under what circumstances, and what did he say?

(Objected to as immaterial.)

Ans. I will answer in this way: that I heard him say that if the citizens of Portland, who had property that he, as a proprietor, under his title which he claimed that he had not yet got his patent, that by insisting for him to get his patentee that he would make a warranty-deed to any of them who paid for their property. I heard him state that several times.

JAMES BURK.

ISAAC W. BUCHANAN, being duly sworn, testifies as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Isaac W. Buchanan; forty-two; Portland, Oregon; engineer.

2. State whether or not you are acquainted with A. M. and L. M. Starr and Benjamin Stark; and, if so, how long, and where have you known each?

205 Ans. I am acquainted with each. I became acquained with L. M. Starr in 1852; with both A. M. and L. M. Starr in 1852. I became acquainted with Benjamin Stark in 1853 or 1854. I knew them in Portland, Oregon.

3. State whether or not you ever heard any conversation between Benjamin Stark and A. M. or L. M. Starr in regard to the title to block eighty-one, in the city of Portland, Oregon; and, if so, when and where and what that conversation or conversations was.

(Objected to as leading and immaterial.)

Ans. I heard Mr. Stark say that he would make Starr a title to that property as soon as he got his title. I don't recollect the time. It was in Starr's office.

4. How long before Stark was appointed United States Senator?

(Objected to as leading and immaterial.)

Ans. About a year, I think. I can't state exactly how long.

Cross-examination:

Question 1. Who was Stark speaking to when he said this?

Answer. He was talking to A. M. Starr.

2. Who else, if any one, was present beside yourself, Stark, and A. M. Starr?

Ans. L. M. Starr was there and Arbaham Stewart, I think.

3. Have you any business connection with L. M. Starr at present; and, if so, what?

Ans. I have not.

4. Have you ever had with either of the Starrs?

Ans. Yes.

5. With which one, and when, and what kind of business connection?

Ans. With both of them. I have worked for them. I have been in partnership with them. I have run a saw-mill for them in 1854, I think. I was in partnership with them from 1854 to 1855. L. M. Starr and I ran the distillery together about six years ago.

I. W. BUCHANAN.

AUGUST 13, 1872.

W. D. PITTENGER, being duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation.

206 Answer. W. D. Pittenger; residence, Hillsboro; age, thirty-nine; and occupation, county clerk of Washington County.

2. State what examination or search you have made in the county clerk's office in Washington County in the case of Zachariah C. Norton against Winter & Latimer for the execution in said case and with what result.

(Objected to as irrelevant and immaterial.)

Ans. I have spent about one day's time in examining the papers in the office and find no execution with the papers in the case; but have found two executions in a lot of executions that were put up in a separate package, of which two executions these papers are copies, word for word and figure for figure, and copied by me. I was not able to find the first execution referred to in these papers.

3. State whether or not there is in your office any execution-docket in cases prior to 1860?

Ans. I have not been able to find any execution-docket for the year in which these executions were issued, nor previous to that. I have been unable to find any execution-docket until after these executions were issued.

(The papers referred to above are attached to the deposition of this witness and made a part thereof, and marked "Exhibits A and B.")

(Defendant, by his counsel, objects to the same as irrelevant and immaterial and not the best evidence.)

RALPH WILCOX, *Examiner.*

Cross-examination.

W. D. PITTENGER.

EXHIBIT A.

TERRITORY OF OREGON,
Washington County, ss:

To the sheriff of Washington County, greeting:

Whereas judgment against Gabriel Winter and Benjamin G. Latimer, for the sum of four thousand four hundred and ninety-six dollars and eighty-six cents, and eighty-eight dollars and eighty cents costs, was recovered at our district court of the United States in and for said county, at the May term thereof, A. D. 1852, at the suit of Zachariah C.

Norton, which said judgment is not yet satisfied, these are, there-

207 fore, in the name of the United States of America, to command you, as you were before, that of the goods and chattels of the said Gabriel Winter and Benj. G. Latimer (except such as the law exempts) you cause to be made the said sum, interest and costs, and accruing costs, by distress and sale thereof according to law; and of this writ make legal service and due return to the clerk's office of said court on or before the next term thereof.

Given under my hand and the seal of said court this 24th day of February, A. D. 1854.

[SEAL.] R. WILCOX, *Clerk.*

Amt. judgment	$4,496 86
" costs	88 80
" costs first execution	37 20
	$4,622 86
Deduct amt. collected	660 00
Bal. due	$3,962 86

Interest on same from 8th May, 1852.

Clerk's fees:

Filing precepe and issuing ex	$1 15
Copy of bond, etc.	1 00
	$2 15

No property found within my county belonging to Winter & Latimer. Demanded property, or the money on the bond of S. Norris and A. L. Davis.

Ser.	$2 00
17 miles	3 40
	$5 40

W. H. BENNETT, *Sheriff.*

APRIL 20, 1854.

(Indorsed:) Z. C. Norton v. Winter & Latimer, alias execution 1854.

STATE OF ORETON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing with the original thereof, and that
208 it is a correct transcript therefrom, and of the whole of such original, as the same now appears in my office and custody.

Witness my hand and the seal of the county court affixed this 12th day of August, A. D. 1872.

[SEAL.] PITTENGER,
County Clerk.

[5 ct. rev. stamp.]

EXHIBIT B.

TERRITORY OF OREGON,
Washington County ss:

To the sheriff of said county, greeting:

Whereas judgment against Gabriel Winter and Benj. G. Latimer for the sum of four thousand four hundred and ninety-six dollars and eighty-six cents, and eighty-eight dollars and eighty cents costs, was recovered at our district court of the United States in and for said county, at

all the May term thereof, A. D. 1852, at the suit of Zachariah C. Norton, of which said judgment is not yet satisfied: These are, therefore, in the name of the United States of America, to command you, as you were before, that of the goods and chattles of the said Winter & Latimer (except such as the law exempts) you cause to be made the said sum, interests and costs, and accruing costs, by distress and sale thereof, according to law; and of this writ make legal service and due return to the clerk's office of said court on or before the next term thereof.

Given under my hand and the seal of said court this 7th day of August, A. D. 1854.

[SEAL.] R. WILCOX, *Clerk.*

Amt. judgment	$4,496 86
" costs	88 80
" " execution 1st	37 20
" " execution 2d	7 55
This execution	1 00
	$4,631 41
Deduct amt. collected	660 00
Amt. due	$3,971 41

209 No property found on which to levy this execution.

R. E. WILEY,
Sheriff W. Co.

Mileage, $3.40.

(Indorsed:) Norton v. Winter & Latimer. Execution. Bal., $3,971.41. 1854.

STATE OF OREGON,
Washington County, ss:

I, W. D. Pittenger, county clerk of said county, hereby certify that I have compared the foregoing with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same now appears in my office and in my custody.

Witness my hand and the seal of the county court affixed this 12th day of Aug., A. D. 1872.

[SEAL.] W. D. PITTENGER,
County Clerk.

[5-ct. revenue-stamp canceled.]

AUGUST 14, 1872.

L. M. STARR
v.
BENJAMIN STARK. } In equity.

W. W. CHAPMAN recalled by the complainant, and, being duly sworn, testifies as follows:

Question 1. State whether or not you ever sold lot one in block number eighty-one; if so, to whom, and about when?

(Objected to as immaterial, and not the best evidence.)

Answer. I sold lot one in block eighty-one. My recollection is that it was to Winter & Latimer; Shubrick Norris was a part of that firm, or understood to be doing business for them. Whether he made the contract, or one of them, I do not recollect, but my impression is that it was him. I cannot, from recollection, state the time. I think it must have been in the year 1850 or '51.

2. State whether or not you made a deed to that lot to Winter & Latimer; if so, when?

(Objected to as before.)

Ans. I have no recollection at this day of the circumstance of executing the deed, but that was my mode of doing the business of selling lots. I know that I must have received the pay and executed the deed, from the fact that I have no account or recollection of any indebtedness on their part to me for it, and nothing remained unsettled between them and me in regard to that lot.

210

3. State whether or not you can state from recollection, or from any memorandum of the transaction made by you at the time, how that deed was executed and its contents; and if so, state?

(Objected to as immaterial and not best evidence.)

Ans. I have no memorandum that I know of in reference to the transaction, and my recollection does not serve me as to the particular form of the deed; it was my custom to express in the deed the consideration precisely as it was estimated at the time, and to embrace a proviso or condition for title, if I should obtain one from the Government. I seldom called witnesses to a deed or any instrument of writing.

(All that part of the answer relating to the custom or habit of the witness objected to as not responsive to the question and incompetent.

4. Look at the paper now shown to you, being Exhibit number twenty-five filed in this case, and state whether or not that is a copy of the deed made by you to Winter & Latimer.

(Objected to as immaterial and not best evidence.)

Ans. I have not compared it with the original; I do not recollect the language of the original; but from the form and structure of this deed, and from what I do recollect of the circumstances, I have no doubt of its being an exact copy.

Cross-ex.:

Question 1. Have you any recollection now of having ever executed any deed to Winter & Latimer?

Answer. I have no recollection of the particular circumstance of the execution of the deed; occurrences which had transpired from time to time, from 1852 till the present time, have kept alive in my recollection the sale of that property to Winter & Latimer.

W. W. CHAPMAN.

211

(Copy.)

In the circuit court of the United States for the district of Oregon. In equity.

HENRY FAILING
vs.
BENJAMIN STARK.

Testimony of William Geiger, jr., taken and subscribed before me, Ralph Wilcox, examiner of said court, on the 18th day of January, 1871, in pursuance of notice given on part of complainant and to be used on the trial of the above-entitled cause.

E. D. Shattuck appearing for complainant; W. W. Page and W. Lair Hill for defendant.

WILLIAM GEIGER, JR., being first duly sworn, deposes and testifies as follows:

Question 1. State your age, residence, and occupation.

Answer. My age is fifty-four. Residence at Forest Grove; and occupation, a physician.

2. How long have you resided at Forest Grove, and in what county and State is it?

Ans. I have resided there since 1842. That has been my home. It is in Washington County, formerly Tuality, and State of Oregon?

3. Did you hold any office in Washington County, in November, 1850? And if so, state what office.

Ans. I did; as county clerk, or clerk of the probate court and recorder.

4. Do you know the parties to this suit, Henry Failing and Benjamin Stark; and, if so, how long have you known them?

Ans. I have no personal acquaintance with Mr. Failing—know him by sight. I think I have known Mr. Stark since 1849—more or less acquainted with him since then.

5. Did you know George Sherman, that formerly lived in Portland, Oregon; if so, when did you become acquainted with him?

Ans. I did know him; became acquainted with him in the latter part of August, or first of September, 1850—was at my house sick—came there again in November.

212 6. While you were acting as recorder of Washington County did George Sherman deliver to you any papers to be recorded?

(Objected to as leading and immaterial.)

Ans. Yes, sir.

7. State if you recollect the time when and in what capacity or for whom Sherman claimed to be acting at the time.

(Same objection.)

Ans. Mr. Sherman came to my house with a series of papers for record on the 23d of November, 1850. I examined the papers; first he gave me the order in which he wanted them recorded. On examining the papers as he presented them, I found the two last ones with his name on as attorney for Stark. I made the inquiry of him if he was acting for Stark. He said for Stark and Couch.

(That portion of answer objected to, relating to what was on the papers as incompetent and not the best evidence, and that part of answer as to what Sherman said to him as incompetent and irrelevant.)

8. When you say Sherman come to my house, what do you mean as to your official capacity?

Ans. I had my office at my house. There was no clerk's office in the county.

9. Have you examined recently the original record you made at the time you speak of; if so, how recently have you examined it?

(Objected to as immaterial.)

Ans. I examined it on Monday evening last.

10. Look at the paper now shown you and state if you have seen it before, and state what it is.

(Objected to as immaterial and incompetent.)

Ans. I have seen it before, and it is a copy of part of the papers that Mr. Sherman placed on record at the time before stated.

11. Look at the signatures, and state who appears to have signed the first one.

(Objected to as incompetent.)

Ans. Benjamin Stark and Dan'l H. Lownsdale.

12. What is the date of the paper?

(Same objection.)

Ans. 1st day of March, 1850.

13. What other paper is there besides the one signed by Stark and Lownsdale?

(Same objection.)

Ans. There is one by S. Coffin and W. W. Chapman, and a
213 ratification by John H. Couch for Benjamin Stark. Date of one by Chapman, 13th April, 1850, and date of ratification by John H. Couch, 15th April, 1850.

14. How do you identify these papers as copies of the ones brought to you at that time by Sherman?

(Objected to as immaterial and incompetent.)

Ans. By a private mark I put on them; and I compared them with the record, and make these copies as part of my deposition.

(Objected to as being made part of deposition, as being incompetent and immaterial.)

15. Will you repeat now what Mr. Sherman did and said with regard to the originals of which these are copies?

(Objected to as immaterial and incompetent.)

Ans. He gave me the originals in my hands to record, and gave me the order in which to record them. I recorded them in the order he gave me, and these copies are in that order.

16. State if he said anything as to being attorney for Stark.

Ans. He did. I made the inquiry, and he said he was acting as attorney for Stark and Couch. He made a double statement. He said he was acting as attorney and doing business for them. He used both terms.

17. Do you remember who took the originals away from the office after they were recorded?

Ans. I think Mr. Sherman took them.

Cross-ex.:

Question 1. How do you know the first sheet as being those you saw in the clerk's office?

Answer. I know them by the marks, and having examined them thoroughly.

EXHIBIT No. 1.—(Referred to in stipulation of August 1, 1872.)

"This indenture, made the first day of March, one thousand eight hundred and fifty, by and between Benjamin Stark, of the town of San Francisco, California, party of the first part, and Daniel H. Lownsdale, of Portland, Oregon, party of the second part, witnesseth: Whereas it is deemed expedient by the parties hereto, to determine, settle and adjust the title and possession of certain lands hereinafter described, and to preclude all further controversy in the premises: Now, therefore, the parties aforesaid, in consideration of the mutual covenants and
214 agreements hereinafter contained, and of one dollar by each of the said parties to the other in hand paid, the receipt whereof is hereby acknowledged, have concluded, covenanted, and agreed as follows: The said party of the first part has bargained, sold, remised, released, and forever quitclaimed, and by these presents does bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, his heirs and assigns, all his right, title and interest in all that portion or parcel of a certain tract of land known as the Portland land-claim, and lying in the county of Washington, (late Tuality,) in Oregon aforesaid, on the west bank of the Willamette River, situate south of a certain line described as follows: Beginning at the point on

the west bank of said river at low-water mark, easterly from the southeast corner of a certain tract of land or oblong piece of ground, known on the plat of said town of Portland as Stark's block, where a straight line running parallel with Washington street (late Tuality) will cut the river aforesaid; thence running westerly to the southeast corner of said Stark's blocks; thence westerly with the dividing line between said Stark's blocks and an oblong piece of ground formerly known as the Pettygrove blocks, the same on which the dwelling-house is situated, now occupied by the said Daniel H. Lownsdale and Stephen Coffin, to the southwest corner of said Stark's blocks; thence westerly, with the same bearings of said line and parallel with Washington (late Tuality) street, to the outer line of the claim aforesaid: To have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereunto belonging or appertaining, unto the said party of the second part, his heirs and assigns, to his and their sole use and behoof forever, so that neither the said party of the first part, nor his heirs, nor any person claiming under him or them, shall at any time hereafter by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances or to any part or parcel thereof forever, hereby ratifying and confirming, so far as his right, title, or interest is concerned, all conveyances which the said party of the second part has heretofore made or may hereafter make in the premises hereinbefore quitclaimed. And the said party of the second part has bargained, sold, remised, released, and forever
215 quitclaimed, and by these presents does bargain, sell, remise, release, and forever quitclaim unto the said party of the first part, his heirs and assigns, all right, title, and interest in all that portion or parcel of the tract of land known as Portland land-claim before mentioned and described, situate, lying, and being north of the line hereinbefore more particularly defined, set forth, and described: to have and to hold the same, with all the tenements, easements, rights, privileges, and appurtenances thereto belonging or appertaining, unto the said party of the first part, his heirs and assigns, to his and their sole use and behoof forever, so that neither the said party of the second part nor his heirs, nor any person claiming under him or them, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever; hereby ratifying and confirming all conveyances which the said party of the first part has heretofore made or may hereafter make, forever, in the premises, so as aforesaid by the said party of the second part quitclaimed. And the said party of the first part, so far as his right, title, and interest are concerned, hereby ratifies and confirms all conveyances made by the said party of the second part or his lawful attorney previous to the first day of January, one thousand eight hundred and fifty, of the following lots, namely: Lots numbered one and three in block twenty-six; lots number three and four in the block where the schoolhouse stands; and lots numbered one, two, three, and four in block number seventeen; all said lots lying north of said line, and being numbered and described *and described* on the plot of the town of Portland aforesaid. And the said party of the first part likewise ratifies and confirms all grants or conveyances made by the said party of the second part or his lawful attorney in good faith and for a valuable consideration to this date subsequent to said first day of January, of lots situated north of said line; provided always, and the said party of the second part hereby covenants for himself, his heirs, executors, and administrators, that he will pay over all sums of money which have since first day of

January been, or may hereafter be, paid unto the said party of the second part, his heirs, executors, administrators, or assigns, for
216 and in consideration of the grants and conveyances aforesaid. And the said party of the second part further covenants for himself, his heirs, executors, and administrators, that in case any person or persons, holding or claiming under him, except the holder of those lots and under those conveyances especially hereinbefore confirmed by the said party of the first part, shall refuse to ratify and confirm this indenture, he, the said party of the second part, will, at the option of the said party of the first part, at any time within six months from this date, cancel this indenture and release all rights acquired under these presents by the parties hereto. And the said party of the second part, for himself, his heirs, executors, and administrators, further covenants that he will, within six months from the date of these presents, out of the lots on the south side of the above-described line, and situate in said Portland claim, not now conveyed or granted away by the said party of the second part or his lawful attorney, make, seal, and deliver to the said party of the first part a deed, good and sufficient in law, of any one unimproved lot, fifty by one hundred feet, which the said party of the first part may select, without cost or expense to the said party of the first part.

In witness whereof the parties hereto have hereunto interchangeably set their hands and seals the day and year first above written.

BENJ. STARK.
D. H. LOWNSDALE.

(The words "this indenture" interlined before execution.)

Signed, sealed, and delivered in the presence of—
JOHN T. EMMET.
H. L. DODGE.

STATE OF CALIFORNIA,
District of Sn. Francisco, ss:

Personally appeared, this second day of March, A. D. 1850, Benjamin Stark and D. H. Lownsdale, to me personally known to be the signers and sealers of the foregoing instrument, and acknowledged that they executed the same, and that it is their free act and deed, for the purposes therein mentioned.

Before me.

JNO. W. GEARY,
First Alcalde of the District of San Francisco.

217 STATE OF CALIFORNIA,
District of San Francisco, ss:

I, Henry L. Dodge, clerk of the alcalde court, and the court of first instance, within and for the district of San Francisco, aforesaid, hereby certify that John W. Geary is, and was at the time of taking the foregoing acknowledgment, first alca'de of the district of San Francisco, aforesaid, and that his signature thereunto affixed is genuine.

In witness whereof, I have hereunto set my hand and the seal of said court this second day of March, A. D. 1850.

H. L. DODGE,
Clerk Court First Instance Dist. of San Francisco.

Recorded November 23d, A. D. 1850.

WILLIAM GEIGER, JR.,
Recorder.

EXHIBIT No. 2—(Referred to in stipulation of August 1, 1872.)

We, Stephen Coffin and W. W. Chapman, partners with D. H. Lownsdale in the town of Portland, hereby ratify and confirm a certain agreement between Benj. Stark and D. H. Lownsdale, bearing date the first day of March, A. D. 1850, respecting an adjustment of title, hereby placing the disposition of property up to notice of said adjustment upon the same footing with the disposition of property before the first day of January last.

In testimony whereof we have hereunto set our hands and seals this 13th day of April, A. D. 1850.

(Signed) S. COFFIN. [SEAL.]
W. W. CHAPMAN. [SEAL.]

PORTLAND, O. T., *April* 15, 1850.

EXHIBIT No. 3—(Referred to in stipulation of August 1, 1872.)

I ratify the above agreement, as far as my interest is concerned in said property.

JOHN. H. COUCH,
For BENJ. STARK.

Recorded this 23d day of November, A. D. 1850.

WILLIAM GEIGER, JR.,
Recorder.

STATE OF OREGON,
Washington County, ss:

I, J. D. Merryman, county clerk of said county, do hereby certify that I have compared the foregoing instruments of hand-
218 writing with the original record thereof, as found on pages 31, 32, 33, 34, 35 and 36, in book A, marked "Bonds and deeds No. 1," for said county, and that the foregoing are true transcripts therefrom, and the whole of said original instruments, as the same appear of record in my office for said county.

In witness whereof, I have hereunto set my hand, and the seal of said county court affixed, at my office in Hillsboro, this 11th day of January, A. D. 1871.

J. D. MERRYMAN,
County Clerk.

2. Is this a copy of the copy which you made upon the record-books, as you have before stated?

Ans. Yes, sir.

(Signed) WILLIAM GEIGER, JR.

DISTRICT OF OREGON, *ss:*

I hereby certify that I have compared the foregoing writings, on papers numbered from 1 to 12 inclusive, with the original deposition and exhibits of William Geiger, jr., and that they are full and true copies of the whole of such original deposition and exhibits attached.

RALPH WILCOX,
Examiner, U. S. Circuit Court, Oregon.

AUGUST 14, 1872.

L. M. STARR,
v.
BENJAMIN STARK. } In equity.

Testimony taken on part of the defendant.

Dolph and Chapman, for plff.; Bronaugh, for deft.

E. M. BURTON, being duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation?

Answer. E. M. Burton; age, fifty-five; residence, Portland; and an architect.

2. State whether you are acquainted with the property described in the complaint in this suit as fractional block 81, in the city of Portland; if so, how long have you known the property?

Ans. I am acquainted with it; have known the same some
219 twelve or fifteen years; have been here some eighteen years, and have known the property from some time after I came; don't exactly know when all the property was built upon.

3. State whether there are any improvements on lot one in said block, the same being the northerly lots of said block; and, if so, the character and value of said improvements, if you know.

(Objected to as immaterial,)

Ans. There is a small frame building on the northerly part of the lot, and a heavy stone wall on the back part. The buildings, as they now are, are of not much value; if a man owned the ground they would be of some value, but, if he wanted to move them, I don't know whether they would be worth moving or not.

4. As they stand, what value would you put on the building on the corner of lot one?

Ans. About $300; if a man was going to let it stand there it might probably worth that to him.

5. Is that the only building on lot one?

Ans. I do not know whether it is or not; there may be part of another building on it. There appears to be nine buildings on the entire ground; I can't tell what parts of lots each one covers, not knowing the size of them.

6. State, if you know, the character and value of the building or buildings on lot two in said block?

Ans. They are small frame buildings—quite small— one story; I don't know whether there is more than one building on that lot; they are all connected together along there, and make a continuous front; that is about as near as I can recollect. I don't know what value to set upon that building or buildings; there may be part of one or two buildings on that lot. They are very cheap buildings. I should rather take a look at the premises before putting a value upon them.

7. Have you examined the property again, and more particularly, since answering the last question? and, if so, state now the value of the building or buildings on lot two.

(Objected to as immaterial.)

Ans. I have; and, to the best of my judgment, the two buildings are worth about $500 each; there are two buildings on lot two.

220 8. State, if you can now, the nature and value of all the buildings on lot one.

Ans. I estimate them at $800; this estimate is for them to remain on the ground, to be used by the owners

9. State, if you know, the character and value of the improvements on lot three in said block.

Ans. There are three buildings on lot three, I believe; I estimate the three to be worth $650.

10. State, if you know, the character and value of the improvements on the N. half of lot four in said block.

Ans. I estimate the building on that to be worth $600.

11. How long have those buildings been erected?

Ans. I don't know; they are all old buildings, with the exception of three, and those are in a better condition and look like newer buildings than the others.

12. On which lot are those three?

Ans. One on lot one and two of them on lot three. The estimate made by me is just from looking at the front of the buildings; I have had no chance to go through them.

13. Is there any other improvement on lots one and two; and if so, state the character and value of that?

Ans. There is a stone wall in the rear of lots one and two, next to the river; the wall is one hundred feet long on the river; I think there is four cross-walls running back, and they are worth about $5.50 per perch in their present condition. I can't give the number of perches in the wall.

14. State whether you are acquainted with the value of unimproved real property in the city of Portland; and if so, state as near as you can the worth of lots one, two, three, and the north ½ of four, respectively, without those improvements?

(Objected to as immaterial and irrelevant.)

Ans. I am not well acquainted with the value of real estate here, and would not consider myself a good judge. I should think that one, two, and three would be worth $15,000 each, and the north ½ of four about $7,500.

Cross-ex.:

Question 1. Can you state how high or how thick that wall is? If so, state.

221 Answer. I think that the wall is about five feet thick at the bottom and about two feet thick at the top; the highest is perhaps about eighteen to twenty feet on the river side; the cross-walls is about three feet at bottom and two feet at the top; I can't give the height of the cross walls.

2. State, if you know, about what that wall cost.

Ans. I think it was about $3,600, as near as I can come at it; I think that included the whole cost, excavating and all, as near as I remember.

3. Has not the entire front of block eighty-one, to the middle of Front street, including the intersections of the cross streets, been improved by Nicholson pavement at the expense of that property?

Ans. Front street has been improved by Nicholson pavement; I don't know whether the cross streets have been or not. I don't know who paid for the making of this Nicholson pavement. I think it was improved by this property.

4. These buildings, at the time they were erected, cost a great deal more than their present value, did they not?

Ans. They must have cost a good deal more.

5. Do you think these lots would sell at public auction at the prices you have named?

Ans. I don't know as they would.

E. M. BURTON.

IRA GOODNOUGH, being first duly sworn, deposes as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Ira Goodnough; age, forty-two; residence, corner of tenth and Yamhill streets, Portland; builder and contractor.

2. State whether you are acquainted with the property described in the complaint in this suit as fractional block eighty-one in the city of Portland; and, if so, how long have you known the property?

Ans. I am acquainted with the property, being the block north of Oak street; have known it about twelve years.

3. State whether you are acquainted with the nature and character of the improvements on that block, if any there be.

Ans. I am.

222 4. State whether there are any improvements on lot one in said block; and, if so, the character and value of those improvements.

Ans. There are improvements on that lot; lots one and two, as near as I can calculate, are divided into five parts; has what would be called five buildings on them; the value of the buildings on lot one is $650.

5. State what is the character and value of the buildings on lot two.

Ans. It has one old building, about twenty feet in width, of the value of $75; one newer building, about six or eight years old, that I value at $400; and one-half of another, the same kind of building, at $200; the other half of the same was estimated in the value placed on the buildings on lot one.

6. State whether there are any improvements on lot three in said block; and, if so, their character and value.

Ans. There are two buildings in a very dilapidated condition. I place the value there at about $200; they are worthless to move.

7. State whether there are any improvements on the north ½ of lot four in that block; and, if so, their character and value.

(Objected to as immaterial.)

Ans. There is a building there of about $250 value on the property as it now stands, on north half of lot four.

8. State how you arrived at your knowledge of the character and value of these buildings; what you did to ascertain the same.

(Objected to as immaterial and incompetent.)

Ans. I passed through most of them and around them, and from the general appearance of the buildings I made my calculations from my knowledge of old buildings, and my estimates are made on the ground that the buildings are to remain there.

9. State whether there is any other improvement beside which you have mentioned on lots one and two; and, if so, the nature, extent, and value of such improvements.

(Objected to as leading and immaterial.)

Ans. There is a stone wall, but the value and extent I am not prepared to say; the street is also improved, and the extent and value I cannot state.

223 10. State whether you are acquainted with the value of unimproved property in the city of Portland; and, if so, state the value of said lots one, two, and three, and the north half of four, respectively, without any of those improvements.

(Objected to as irrelevant and indefinite.)

Ans. I am somewhat acquainted with the value of such unimproved property; have bought and sold more or less of it in the last twelve years; lot one, I should place at about $13,000; lot two, $10,000; lot three, $10,000; the north half of lot four, $5,000.

Cross-examination:

Question 1. State, if you know, what the relative value is, compared with the value of 1860, of the naked lots?

(Objected to as immaterial.)

Answer. From memory and sales made, judging from the way that property was sold at that time, I should say that it was then worth about twenty-five per cent. of its present value; I should say that it wouldn't exceed that.

2. State, if you can, whether since 1860 there has been any change in the relative character and value of improvements upon property of this description?

(Objected to as immaterial.)

Ans. As to the character, there has been a change; improvements are now more permanent and of a better character than they were at that time. As to the value, there has been a change; stone work is a little cheaper, wood work is about the same.

IRA GOODNOUGH.

DISTRICT OF OREGON, *ss:*

I, Ralph Wilcox, clerk of the circuit court of the United States for the district of Oregon, hereby certify that the foregoing and annexed documents have been carefully compared with the original documents now on file in my office, under my direction and supervision, that the same have been corrected, and are true and full copies of the whole of such originals.

Witness my hand and the seal of said court, at Portland, in said district, on the 30th day of September, A. D. 1874.

[SEAL.] RALPH WILCOX, *Clerk.*

224 In the circuit court of the United States for the district of Oregon.

L. M. STARR, COMPLAINANT, *vs.* BENJAMIN STARK, DEFENDANT. } No. 62.

Now, at this day, comes the complainant in the above-entitled suit, by J. N. Dolph and W. H. Effenger, his solicitors, and the defendant, by Wm. Strong and E. C. Bronaugh, his solicitors, and this cause having been heard at the May term, A. D. 1873, of this court, on argument of counsel for the respective parties on the pleadings, exhibits, and proofs, and the court having considered the same and being of the opinion that the matters set up in the complainant's bill and established by the evidence are sufficient to call for the equitable interposition of this court, and to entitle the complainant therein to the equitable relief prayed for:

Therefore, it is adjudged, ordered, and decreed that Benjamin Stark, defendant, be taken and held to have been trustee of the legal title to the premises in controversy, namely: Lots No. one, (1,) two, (2,) and the north half of lot No. four, in fractional block No. eight-one, (81,) in the city of Portland, county of Multnomah, and State of Oregon, in trust for the use and benefit of the complainant, L. M. Starr, as alleged in his, said complainant's, bill of complaint.

225 And it is further adjudged, ordered, and decreed that defendant, Benjamin Stark, be, and he hereby is, perpetually enjoined and restrained from prosecuting any action at law against complainant, L.

M. Starr, his heirs or assigns, to recover or take possession of the aforesaid lots one, (1,) two, (2,) and the north half of lot four, (4,) in said fractional block eighty-one, (81;) that said complainant, L. M. Starr, shall be, and he hereby is, declared to be the equitable owner of the whole of the aforesaid premises as against the claim or claims of defendant, Benjamin Stark.

And it is further adjudged, ordered, and decreed that the said defendant, Benjamin Stark, do, within sixty days next succeeding the date of this decree, make, execute, and deliver to the said complainant, Lewis M. Starr, a good and sufficient deed, duly executed, conveying to the said Lewis M. Starr all his (Stark's) right, title, interest, claim, and demand which he ever had and now holds under and by virtue of his patent issued under the act of Congress of September 27, 1850, or otherwise, in and to the said lots, namely: Lots No. one, (1,) two, (2,) and the north half of lot No. four, (4,) all in fractional block No. eighty-one, (81,) in the city of Portland, as by the map thereof, in the county of Multnomah, and State of Oregon; and in the event said defendant, Benjamin Stark, shall from any cause fail to make, execute, and deliver the deed aforesaid, then and in that event this decree shall stand for and be
226 taken to be such deed.

And it is further adjudged and decreed that the defendant, said Benjamin Stark, do pay to the complainant his costs in this behalf expended, the same to be taxed.

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed May 8, 1874. Ralph Wilcox, clerk.

227 In the circuit court of the United States for the district of Oregon.

LEWIS M. STARR, COMPLAINANT, *vs.* BENJAMIN STARK, DEFENDANT AND APP'LLANT.	Suit in equity. No. 62.

To the honorable the judges of said court or to any of them:

The petition of Benjamin Stark, defendant in the above-entitled and numbered suit, respectfully shows to the court, that on the 18th day of February, 1870, the complainant, Lewis M. Starr, filed his bill in the circuit court of the United States for the district of Oregon, against your petitioner, claiming and seeking to establish in himself an equitable title to certain real property situate within the jurisdiction of said court, and which said real property is fully described in said bill, and was and is of the value of more than two thousand dollars; that your petitioner in due time made answer to said bill, denying the material allegations therein, and setting up title legal and equitable in himself to said real property, and an issue was made up and testimony taken by both parties.

That on the 8th day of May, 1874, a final decree was made and pronounced by said court in said cause, wherein the decision was in favor of the said Lewis M. Starr, and against your petitioner, and in and
228 by said decree the entire amount of said real property was disposed of adversely to the right, claim, and title of your petitioner. And so the same appears of record in this court.

Wherefore your petitioner appeals from the whole of said decree in said circuit court to the Supreme Court of the United States, and prays

that his appeal may be allowed; and that a citation may issue according to law and the usages of this court; and that the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the said Supreme Court of the United States without delay, to the end that said Supreme Court may proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said bill with costs, or such other decree as to the said Supreme Court shall seem just.

And your petitioner now tenders to the court a bond in the penal sum of two thousand dollars, conditioned according to law, with Hamilton Boyd and Lloyd Brooke, of ample responsibility, as security.

WILLIAM STRONG,
Solicitor for Appellant.

The foregoing petition for an appeal is allowed. Dated July 2d, 1874.

LORENZO SAWYER,
Circuit Judge.

229 Supreme Court of the United States.

LEWIS M. STARR, COMPLAINANT,
vs.
BENJAMIN STARK, DEFENDANT. } Suit in equity. No. 62.

Know all men by these presents that we, Hamilton Boyd and Lloyd Brooke, of the city of Portland, in the State of Oregon, are held and firmly bound unto Lewis M. Starr, complainant, in the above-entitled suit, in the sum of two thousand dollars, to be paid to the said Lewis M. Starr, his executors, or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our executors and administrators, firmly by these presents, sealed with our seals, and dated this 27th day of June, 1874.

Whereas the above-named Benjamin Stark hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named Benjamin Stark shall prosecute his said appeal to effect, and shall answer all costs and damages if he shall fail to make
230 good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. BOYD. [SEAL.]
L. BROOKE. [SEAL.]

Sealed and delivered in presence of—
WM. STRONG, of Portland, Oregon.

The above bond is approved and accepted. Dated second day of July, 1874.

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed July 6, 1874. Ralph Wilcox, clerk. By Ed. Wilcox, deputy.

231 By the honorable Lorenzo Sawyer, one of the judges of the circuit court of the United States for the district of Oregon.

To Lewis M. Starr:

Whereas Benjamin Stark has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court

of the United States for the district of Oregon, made in favor of you, the said Lewis M. Starr, and has filed the security required by law, you are therefore hereby cited to appear before said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at chambers, in the said circuit, the second day of July, in the year of our Lord one thousand eight hundred and seventy-four.

LORENZO SAWYER,
Circuit Judge.

(Indorsed:) Supreme Court of the United States. Lewis M. Starr, complainant, vs. Benjamin Stark, defendant. Citation on appeal.

Service accepted July 6, 1874.

J. N. DOLPH,
Sol. for Compl't.

Filed July 6, 1874.

RALPH WILCOX, *Clerk*,
By ED. WILCOX, *Deputy*.

232 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, Ralph Wilcox, clerk of the United States circuit court for the district of Oregon, in the ninth circuit, do hereby certify that the foregoing and annexed pages contain a true and complete transcript of the record and proceedings had in said court in the case of Lewis M. Starr against Benjamin Stark as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at Portland, in said district, on this 30th day of September, A. D. 1874.

[SEAL.] RALPH WILCOX, *Clerk*.

233 Circuit court of the United States of the ninth judicial circuit, district of Oregon.

LEWIS M. STARR
vs.
BENJAMIN STARK.

Decision of Hon. Lorenzo Sawyer, circuit judge of the United States, delivered May 8, 1874.

Joseph N. Dolph, Wm. H. Effinger, counsel for complainant; William Strong, Bronaugh & Catlin, counsel for defendant.

234 In the circuit court of the United States, district of Oregon.

STARR
vs.
STARK.

1. FORMER DECREE WHEN NOT A BAR TO SECOND ACTION.—Starr, being in possession of certain lots in Portland, Oregon, filed a bill in chancery against Stark, to determine an adverse claim of title by the latter, in which the complainant, as one ground of relief, alleged title

derived to himself through a United States patent to the city of Portland, and that defendant claimed title adversely under a subsequent patent to himself. And, as another ground of relief, that the legal title was in defendant under his said subsequent patent; but that through certain transactions set out, complainant had the equitable right, and was entitled to a conveyance of said legal title. The court, upon motion of defendant, held that the two grounds of action were inconsistent, and could not be litigated together in the same action, and required complainant to elect upon which he would proceed, and omit the other; whereupon complainant, after excepting to the ruling and order, elected to rely on the first and withdraw the second. A decree having been rendered in favor of complainant on the cause of action retained, which was affirmed by the supreme court of Oregon, it was finally reversed by the Supreme Court of the United States, on the ground that the patent to the city was void, and the bill subsequently dismissed, in pursuance of the mandate of that court. Complainant then filed a second bill, alleging the equitable title before set up in the first, and withdrawn in obedience to said order of the court, and prayed a conveyance of the legal title.

HELD, That the proceedings and decree in the former action are not a bar to the second action.

2. An irregular conveyance, by one acting under a power of attorney, of a possessory claim to public land, acquiesced in and acted upon by the principal, the consideration having been enjoyed by him, will vest in the grantee the equitable title to the interest purported to be conveyed.

235 3. WRITTEN CONTRACTS, HOW CONSTRUED.—Written contracts should be construed in view of the circumstances and condition of things in which they originated.

4. Subsequent acts of the parties, tending to show the construction put upon the contract by the parties themselves, may, also, be considered where the meaning is doubtful.

5. COVENANT CONSTRUED.—Lownsdale, Coffin, and Chapman claimed to be owners of the Portland land-claim, being a possessory claim on the public lands of six hundred and forty acres, upon which the city of Portland was laid out, Coffin and Chapman deriving their interest through conveyances from Lownsdale. Stark claimed to own an undivided half of said land-claim. Lownsdale and Stark, at San Francisco, entered into an agreement, dated March 1, 1850, to settle their conflicting claims, by which Lownsdale, with specified exceptions of sales made before the 1st of January previous, which were confirmed, conveyed to Stark all his interest in the part lying north, and Stark to Lownsdale all his interest to the part lying south, of a certain line. The instrument executed contained a covenant, that in case "any person or persons" holding interests under Lownsdale, with certain exceptions, "shall refuse to ratify and confirm this agreement, then the agreement might be canceled, at the option of Stark, within six months."

HELD, That Coffin and Chapman were embraced in the terms of this covenant, and that the object was, in this mode, to make them substantially parties to the agreement, and, as such, to secure their assent thereto.

6. CONTRACT CONSTRUED.—The said indenture, between Lownsdale and Stark, dated March 1, 1850, ratified and confirmed certain sales made by each prior to January 1, 1850. Coffin, Chapman, and Lowns-

dale (the latter acting by Chapman, his attorney in fact) had made other dispositions of property subsequent to January 1st and prior to April 13, 1850, at which latter date Coffin and Chapman first had notice of said compromise. Coffin and Chapman indorsed, on said compromise agreement, an instrument in writing, by which they "ratify and confirm" the same, with a modifying or further clause, "hereby placing the disposition of property, up to notice of said adjustment, upon the same footing with dispositions of property before the first of January last," under which instrument Couch, in the name of, and as attorney for, Stark, indorsed and executed an instrument, as follows: "I ratify the above agreement, so far as my interest is concerned, in said property."

HELD, That these last two instruments constituted a modification of the said original indenture between Lownsdale and Stark, so as to ratify and confirm, on the part of Stark, to the extent of his interest, all dispositions of lots made by Coffin, Chapman, and Lownsdale through Coffin and Chapman, during Lownsdale's absence in San Francisco, from January 1st to April 13, 1850, and to ratify and confirm said contract, as so modified by the parties in interest.

236 7. A power of attorney to Couch, authorizing him "to do any and all acts during my (Stark's) temporary absence which I might myself do were I personally present," together with accompanying letter of instructions to settle the difficulty about his undivided half, are sufficient authority to Couch to make said modification under the circumstances shown in the case.

8. A revocation of a power is not necessarily implied from a subsequent power to another party to do the same thing. When the second power is not absolutely inconsistent with the first, the question whether it was intended to revoke the other must be determined by the circumstances of the case.

9. ADOPTION AND RATIFICATION.—After the modification of said contract each party occupied the part released to him without objection from the other, and without claim to the part released by himself, and performed many other acts consistent with a recognition of the validity of said modified agreement, and inconsistent with any other view.

HELD, that said subsequent acts of Stark constitute an adoption and ratification of the acts of Couch, as his attorney; and that the equitable title to his interest in the said lots, sold between January 1st and April 13th by virtue of the said several transactions, passed to the grantees of Coffin, Chapman, and Lownsdale.

10. CANNOT RATIFY IN PART.—A party cannot adopt that part of an agreement, made on his behalf without authority, which is beneficial to himself, and repudiate the part which is beneficial to the other party.

11. EQUITABLE TITLE UNDER DONATION ACT.—Where a donee, under the "Donation act" of September 27, 1850, subsequent to the initiation of the four years' possession required by the act to entitle him to a patent, which is afterward ripened into a legal title by the issue of the patent, and before the passage of the said act, has conveyed all his right, title, and interest, together with the possession in and to a portion of the land so possessed and claimed by him, without covenants for further conveyance, or by quitclaim deed, and said land is thereafter possessed and occupied by his grantee, such conveyance is recognized and protected by said donation act, and the equitable interest in the land so conveyed passes to his said grantee; and a court of equity will enforce the equity by compelling such donee to convey the legal title vested in him by the patent subsequently issued.

12. OBITER DICTA. WHAT NOT.—When the record fairly presents two

points upon the merits in a case, upon either of which the appellate court might rest its decision, and the court actually decides both, without indicating that it is intended to rest the judgment upon one rather than on the other, the decision upon neither can be regarded as obiter.

237 Before Sawyer, C. J., and Deady, D. J.

SAWYER, Circuit Judge.

The complainant and his grantors having been for many years in possession of lots 1 and 2, and the north half of lot 4, in block 81, in the city of Portland, the premises in controversy, the defendant, Stark, on December 22, 1868, commenced an action on the law side of the court for their recovery, in which judgment for the possession thereof was rendered in favor of said Stark February 15, 1870. The complainant then filed this bill in equity, setting up what he claims to be a good equitable title to the premises as against defendant, Stark, and praying that defendant be decreed to convey the legal title, and be enjoined from executing his judgment at law for the possession, etc.

The following facts satisfactorily appear, either from the admissions of the pleadings or the evidence: On September 22, 1848, Francis W. Pettygrove executed to Daniel H. Lownsdale a conveyance, which purported, in consideration of the sum of five thousand dollars, to convey to the latter all the "right, title, interest, claim, and demand, in law and in equity, present and in expectancy," of said Pettygrove to a certain tract of land specifically described, containing about six hundred and forty acres, "together with all and singular the houses, outhouses, fences, wharves, and other improvements," excepting certain designated lots.

238 On March 22, 1849, Stephen Coffin, by conveyance from, and agreement with, said Lownsdale, became the owner of one-half of the interest so acquired by said Lownsdale in said land-claim. On December 13, 1849, by further conveyance from Lownsdale and Coffin, Wm. W. Chapman became the owner of one-third interest in said land-claim, the three, from that time, holding and dealing with the same as partnership property. The several conveyances and agreements between these parties, their acts under them in connection with the said Portland land-claim, the general facts of the case, and condition of affairs at Portland at the time are the same as fully set out in the case of Lamb v. Davenport, 1 Sawyer's R., 611, and need not be repeated here. From said March 22, 1849, Lownsdale and Coffin, and from said December 13, 1849, Lownsdale, Coffin and Chapman, were in the possession of said land, except such town lots as had been from time to time sold by these parties and their grantors, claiming the title thereto under said several conveyances and agreements against all the world except the United States, or, in other words, all the title that at that time it was possible for a private party to obtain under the laws of the United States, the real title being in the Government, and there being yet no law authorizing a sale or conveyance of the Government's title. They actually lived upon the land, cultivated portions of it, improved it, erected houses thereon, and occupied others already built, exercised acts of ownership over the land which were generally recognized

239 by the inhabitants of Portland, and laid off portions into blocks and lots, and sold them as town property. Although the tract does not appear to have been enclosed by a fence, yet these parties entered and claimed under deeds with designated boundaries, and this,

in connection with living upon it, and performing the acts indicated, upon well-settled legal principles, constituted possession of all of said tract not actually adversely occupied by other parties, (Hicks v. Coleman, 25 Cal., 122, and cases cited, including cases in the U. S. Supreme Court, Ayres v. Bensley, 32 Cal., 620.) They continued so in possession of said land-claim, disposing of town lots, till April 15, 1850, during which time certain transactions took place which will now be mentioned. About Jan. 8, 1850, said Lownsdale departed from Portland for San Francisco, leaving Coffin and Chapman in charge of the said land-claim. Before his departure, on January 7, he executed a power of attorney to Chapman, being Exhibit A, annexed to Chapman's deposition in evidence. It is brief, and in general terms authorizes Chapman "to superintend and transact my business in said Territory during my absence, to do and perform anything pertaining to my interests in Oregon which he, in his judgment, may think advisable, particularly in signing deeds to Portland lots;" this last clause containing the only particular specification in it. Lownsdale met defendant Stark at San Francisco. Stark had before set up a claim to an undivided half of the Portland land-claim, which he now insisted on. He claimed that the Portland land-claim had been taken up and held by said Pettygrove, not
240 alone, but in conjunction with one Lovejoy, and that Lovejoy had conveyed his half interest to him, Stark, and by virtue of said alleged right of Lovejoy, and conveyance to himself, he claimed title to an undivided half.

Subsequently, Lownsdale and Stark came to a settlement of their controversy by fixing upon a certain designated east and west line, nearly coincident with the street in Portland now known as Stark street, Lownsdale agreeing to relinquish to Stark, with certain specified exceptions, all his right, title, interest, and claim in and to that part of the Portland land-claim lying north of said line, and Stark to relinquish to Lownsdale, with certain exceptions, all his right, title and interest in, and claim to, that part lying south of said line. Lownsdale and Stark are the only ostensible parties to this agreement. In pursuance of this arrangement, Lownsdale and Stark, at San Francisco, on March 1, 1850, executed under their hands and seals an instrument in writing, bearing date on that day, a copy of which is annexed to the bill of complaint as Exhibit A. This instrument, among other things, contains the recital: "Whereas it is deemed expedient by the parties hereto to determine, settle, and adjust the title and possesssion of certain lands hereinafter described, and to preclude all future controversy in the premises," etc. It then, on the part of Stark, purports to "bargain, sell, remise, release, and forever quitclaim to Lownsdale, his heirs and assigns," "all his right, title, and interest in all that portion" of
241 said "Portland land-claim," "situate south" of the line agreed upon, "hereby ratifying and confirming, so far as his right, title, and interest is concerned, all conveyances which" Lownsdale "has heretofore made, or may hereafter make, in the premises hereinbefore quitclaimed." And, on the part of Lownsdale, it purports to make a similar sale, conveyance, etc., to Stark, with similar ratifications with respect to all of said land situate north of said line. It also contains the following covenants, which it is important to consider in this case: Firstly, Stark covenants that he, "so far as his right, title, and interests are concerned, hereby ratifies and confirms all conveyances made by the said party of the second part [Lownsdale] or his lawful attorney, previous to the first day of January, one thousand eight hundred and fifty, of certain lots specifically described "lying north of said line," that is

to say, in the part conveyed to Stark. And said Stark likewise ratifies and confirms all grants or conveyances made of said party of the second part [Lownsdale] or his lawful attorney, in good faith and for a valuable consideration, to this date [March 1st,] subsequent to said first day of January, of said lots situate north of said line, that is to say, in the part released to Stark: "Provided always, and said party of the second part [Lownsdale] hereby covenants for himself, his heirs, etc., that he will pay over all sums of money which have since the first day of January been, or may hereafter be, paid unto the said party of the second part, etc., in consideration of the grants and conveyances aforesaid," that is to say, made subsequent to January 1st. And, secondly, Lownsdale further covenents "that, in case any person or persons,
242 holding or claiming under him, except the holders of those lots, and under the conveyances especially hereinbefore confirmed by said party of first part [Stark,] shall refuse to ratify and confirm this indenture, he, the said party of the second part [Lownsdale,] will, at the option of the said party of the first part [Stark,] at any time within six months from this date, cancel and release all rights acquired under these presents by the parties hereto."

Either before Lownsdale left for San Francisco, by Lownsdale, Coffin and Chapman, or after he left, and prior to March 20, 1850, by Coffin and Chapman—and it does not clearly appear which—blocks 78, 79, and fractional block 81, of the town of Portland, were laid off on said land-claim. On March 20, 1850, before Lownsdale's return, and before Coffin and Chapman had notice of the said agreement between Lownsdale and Stark, dated March 1, 1850, Coffin and Chapman, acting for themselves, and Chapman assuming to act for Lownsdale as his attorney, under said power, of date January 7, 1850, fixed a price upon said three blocks, valuing lots 78 and 79 at $3,000 each, and fractional block 81 at $2,000, and agreed that each should take one of these blocks at those prices—Lownsdale to have block 78, Coffin 79, and Chapman fractional block 81. Conveyances to the respective parties were accordingly made on that day, bearing date March 20th, in pursuance of this arrangement. Exhibit F, of the evidence, is a copy of one of the said deeds, being the deed to Chapman. It purports to be a deed from Coffin,
243 Lownsdale and Chapman, "proprietors of Portland," to Chapman, and in consideration of the sum of $2,000, the receipt of which is acknowledged, to release, confirm, and quitclaim to Chapman "lots numbers one, (1,) two, (2,) three, (3,) and four, (4,) in fractional block number eighty-one, (81,) being the warehouse fraction," etc. There was at the time a warehouse upon the block. The deed was signed Stephen Coffin, D. H. Lownsdale, by his attorney in fact, W. W. Chapman, and W. W. Chapman. The sums agreed upon were charged to each of these parties, respectively, in the accounts of their transactions between themselves in relation to the business of selling town-lots, and after Lownsdale's return adjusted and allowed in the settlement of these matters between the parties—Lownsdale acquiescing in the arrangement made in his absence. Chapman, after said conveyance, went into the actual possession of the block, and thereafter possessed and claimed it under the said arrangement and conveyance till he sold the several lots to defendant and his grantors. Said fractional block includes the premises in controversy, and is situated north of said line designated in said instrument of March 1, 1850, executed by said Lownsdale and Stark, and within the tract thereby purporting to be conveyed by Lownsdale to Stark. Other sales had been made by Coffin and Chapman during Lownsdale's absence.

After March 20, 1850, and either on or within two or three days before April 13, 1850, Lownsdale returned to Portland from San Francisco; and after said return Coffin and Chapman were informed, for
244 the first time, of the said arrangement and execution of the said indenture of March 1, 1850, between said Lownsdale and Stark; and upon being so informed refused to ratify or confirm said contract. At that time John H. Couch was a partner of said Stark in mercantile business, carried on at Portland in a store situate but a short distance from said block 81. He professed to be the agent of Stark in respect to the interest claimed by him in the Portland land-claim, and assumed to act as such. After some negotiations between Coffin and Chapman, and Couch, in reference to said claim, and the said indenture executed by Lownsdale and Stark, the said parties came to an understanding, and in pursuance thereof executed and appended to said indenture by indorsement thereon, instruments of which Exhibits B and C, annexed to the bill, are copies. The first is as follows, to wit:

"We, Stephen Coffin and W. W. Chapman, partners with Daniel H. Lownsdale in the town of Portland, hereby ratify and confirm a certain agreement between Benjamin Stark and D. H. Lownsdale, bearing date the first day of March, A. D. 1850, respecting an adjustment of title, hereby placing the disposition of property up to notice of said adjustment upon the same footing with the disposition of property before the first day of January last.

"In testimony whereof we have hereunto set our hands and seals this the 13th day of April, A. D. 1850.

"(Signed) S. COFFIN. [L. S.]
"W. W. CHAPMAN." [L. S.]

245 Under which is the following, to wit:

"PORTLAND, O. T., *April* 15, 1850.

"I ratify the above agreement as far as my interest is concerned in said property.

"(Signed) JOHN H. COUCH,
For BENJ. STARK.

Before the execution of said last-named instrument by said Couch, for said Stark, on September 26, 1849, said Stark had executed a power of attorney so said Couch, of the most general character, without any enumeration of specific acts to be performed. Its language is, "to do any and all acts, during my absence from this Territory, which I might myself lawfully do were I personally present." The said indenture of March 1, 1850, and the two instruments of ratification indorsed thereon, the one executed by Coffin and Chapman, and the other by Couch for Stark, were all recorded together, in the proper recorder's office, on November 23, 1850, at the request of George Sherman, who, at the time, represented himself as acting as attorney for Stark and Couch. After the execution of said several instruments, Lownsdale, Coffin, and Chapman relinquished all possession and all claim to the portion of the Portland land-claim not embraced in said indenture, as modified
246 by said instruments, situate north of said line agreed on, and Stark all claim to the lands south of said line; each party thereafter possessing and exercising acts of ownership over the part so relinquished to him. Stark returned to Portland in June, 1850, when he was furnished by Coffin and Chapman with a list of the lots sold before the date of said modification of contract. Couch and Sherman had,

before the execution of said instruments of ratification, been furnished a list of all lots sold during Lownsdale's absence. Stark also, after said return and notice, stated to Coffin that he would sanction or submit to the contract as modified, and carry out its provisions; and he never did, down to the date of his patent, make any claim to the lots so embraced within said modification, either upon Lownsdale, Coffin, or Chapman, or upon any of the parties in possession as their grantees. September 27, 1850, the donation act was passed by Congress, under which Stark, on September 10, 1853, obtained from the surveyor-general a donation-certificate to the part of the Portland land-claim so lying north of said agreed line, released to him as aforesaid, he having dated his possession in his notification from September 1, 1849. Upon this certificate a patent of the United States issued to Stark, dated December 8, 1860, being the patent which vests in him the legal title to the lands in controversy.

Lownsdale, Coffin, and Chapman, also, in pursuance of an agreement between themselves, dated March 10, 1852, commonly called the "Escrow," set out in Lamb v. Davenport, before refer'ed to, divided that portion of the Portland land-claim lying south of said line among
247 themselves; and each, respectively, obtained a similar donation-certificate and patent thereon to the part of said tract allotted to him under said agreement.

On October 3, 1850, said Chapman, being then in possession of said block 81, conveyed to complainant, Starr, the south half of said lot 2, and on October 8, 1850, the north half to one Butler. On November 11, 1850, Chapman conveyed said lot 4 to one Powell, and on January 30, 1851, said lot one to Winter and Latimer. All the right, title, and interest, so derived from Chapman in and to said lots in controversy so conveyed by Chapman to parties other than complainant Starr, had, since said conveyances from Chapman, and before defendant's patent issued, by mesne conveyances, become vested in complainant Starr. All of said conveyances were for a valuable consideration, and the said several grantees from Chapman, under said conveyances to them, entered into actual possession and erected valuable improvements on said lots; and all the said premises have been in the actual possession and occupation of Starr, and his several grantors, for mercantile and other business purposes, ever since their said several entries under, and soon after their said several purchases from, Chapman. The said premises have always been, from 1850 to the present time, in the heart of the business part of Portland.

On December 7, 1860, one day prior to the issue of said patent to Stark, a patent of the United States, in due form, issued to the corporate authorities of the city of Portland for the tract of land upon which said
248 city is located, which patent includes the lots in controversy. It purports to have been issued under the act of Congress of 1844, known as the town-site act, and to grant the land "in trust for the several use and benefit of the occupants thereof according to their respective interest." It also reserves "any valid claims which may exist in virtue of the several donations of Benjamin Stark, certificate No. 69," and of Daniel H. Lownsdale, William W. Chapman, and Stephen Coffin, under their several certificates. The patent to Stark, on said certificate 69, issued on the next day, contains a similar reservation of any rights that may exist in favor of the city of Portland. The complainant Starr, and his brother, Addison M. Starr, at the date of said patents, were in the occupation of the premises in controversy, claiming the possessory title as hereinbefore set out, and were, therefore, as to these lots, the parties

for whose benefit the legal title thereto, so far as any passed, vested in the city of Portland by virtue of said patent of December 7, 1860.

In January, 1864, said Addison M. Starr, and the present complainant, Lewis M. Starr, being at the time in possession of said premises in controversy in conformity with the provisions of the statute of Oregon authorizing said proceedings, filed their bill on the equity side of the circuit court of Oregon for the county of Multnomah against said defendant Stark, to determine his adverse claim made under his patent. An amended bill was filed in August, 1864, in which the complainants alleged two seperate grounds of relief. In the first they set up a title in themselves, relying on the title derived through the pat-
249 ent to the city of Portland; secondly, they set up the equitable title upon which they now rely, and claimed that Stark should be adjudged to hold the legal title derived under his patent in trust for them. They prayed that Stark's patent should "be set aside and held for naught, and that he be held to release to plaintiffs all his right, title, and interest, claim, and demand to said lots," etc. On October 28, 1864, an order was entered in the cause, by said court, by which the complainants "are ordered to elect which cause of suit they will proceed upon, and to set forth the same in the amended bill to be filed, to which order, requiring the plaintiffs to elect, the plaintiffs except." In obedience to said order the complainants elected to rely upon the patent to the city, and accordingly, on November 1st, filed a second amended bill or complaint, as it is designated in the Oregon code of practice, in which the cause of action now relied on was omitted, and the cause of action resting upon the title derived through the patent to the city and the fraudulent procuring of a patent by Stark more fully set out. Issue having been tak*ing* on the complaint, and the case heard on the testimony introduced, the circuit court entered a decree in favor of the plaintiffs in pursuance of the prayer of the complaint, which decree was affirmed on appeal by the supreme court of Oregon. An appeal having been taken thence to the Supreme Court of the United States, that court held the patent to the city to be void, and that to Stark valid, reversing the decree of the supreme court of Oregon, and remanding the case with in-
250 structions to enter a decree directing the circuit court to dismiss the action, which was accordingly done, and the action finally dismissed in pursuance of said mandate and directions. The defendant Stark now sets up these proceedings in his answer, and insists that, by reason thereof, the cause of action now relied on is res adjudicata, and the former decree a bar to further litigation.

The order of discussion pursued by counsel will be followed, and the question presented by the answer of a former adjudication first disposed of. It is not pretended by defendant's counsel that the cause of action now relied upon was, it fact, put in issue, litigated, and determined in the former action; but it is insisted that it might, and, therefore, ought, to have been so presented, litigated, and adjudged; and this being the case, that the decree in that action is just as conclusive as if it had been so determined. It is conceded that the ground of relief now relied on was at first set up in the complaint as one ground of action, in connection with the cause of action which was actually tried and determined; that the court held the two causes set out to be inconsistent and incompatible, and required the plaintiffs to elect upon which cause they would rely and omit the other; and that, in obedience to this order, plaintiffs did elect, and omitted the one now set up, relying upon the other; but it is insisted that the court erred in this ruling; and, although there was error, it was incumbent on plaintiffs to have it

corrected on appeal; and that, failing to do that, they are barred by the ruling, and that the decree is as conclusive upon the whole
251 title as if this ground of relief had been in fact litigated and adjudged. The complainants, on the other hand, insist that the two causes of action were inconsistent, and for that reason could not be properly relied on by plaintiffs and litigated in the same action; and that the order compelling plaintiff to elect was correct. If wrong in this view, it is still insisted that, since the title now set up was not in fact litigated and not permitted to be litigated, the proceeding in the former case is not res adjudicata.

It is quite clear to my mind that the order compelling plaintiffs to elect upon which cause of action they would rely, and omit the other, was erroneous. The facts constituting the grounds upon which the plaintiffs claimed equitable relief in both cases alleged are entirely consistent with each other. Only the legal conclusions that might be insisted on could be inconsistent. It might be claimed, and was claimed by the opposing counsel, that under one patent the legal title was in the city. If that had been true, the patent to Stark would of course have been void, and a cloud on the title derived through the patent to the city, and the plaintiffs' equity, in respect to the city, rested upon the grant to the city, in trust for their use and benefit, under the act of Congress, as occupants of the premises in question. On the other hand, the legal title having vested in Stark under his patent, as decided by the United States Supreme Court, upon the same state of facts as that under which title in or through the city was claimed, the patent to the city was void, and the plaintiffs' equities as against Stark depended upon the additional, but consistent, acts of plaintiffs and Stark alleged in the
252 omitted cause of action, as affecting their individual rights. There can be no good reasons, it seems to me, why the plaintiffs should not have been permitted to allege the real facts upon both theories as they existed, and have since been proved, and leave the court to draw the correct conclusion therefrom, and give such relief as the plaintiffs were entitled to receive, if found entitled to any, in accordance with the legal or equitable conclusion adopted. If the circuit court of Oregon was right in compelling plaintiffs to elect, then the judgment in the former case is not a bar to this action, because the complainant has never had an opportunity to be heard, and he is not to lose his rights for not litigating them in a case wherein the law will not permit them to be litigated. If the court was in error it still prohibited them from litigating the claim in that action, and deprived the parties of a right by compelling them to elect one cause of action and omit the other. In either case, without any fault of their own, they have in fact been afforded no opportunity to be heard at all on their present cause of action. They did elect, and the wisdom of that election was vindicated by the judgment of the highest court in Oregon, which sustained the title ultimately relied on in that action, and decreed the appropriate relief; but that court also turned out to be in error, and the decree was reversed by a still higher tribunal. Shall complainant now be cut off from procuring an adjudication of his rights because, under such circumstances, the court erroneously prevented him from having it
253 adjudicated before? It is, undoubtedly, well settled that wherever any matter is directly in issue and actually determined by a court of competent jurisdiction, the determination is conclusive between the same parties and their privies, whenever the same matters again arise, even though collaterally. It is said, in Le Guen *v.* Gouverneur et al., 1 John. Cases, 492: "The principle, however, extends far-

ther. It is not only final as to the matter actually determined, but as to every other matter which the parties might litigate in the cause, and which they might have had decided." And this general principle is repeated in similar language in many subsequent cases. But the language is general, and must be considered in connection with the facts of the cases wherein it is used. The case cited affords as good an illustration as any of the principle upon which the rule is founded. The principle is, that an end should be put to litigation; that parties should not litigate their rights by piecemeal; that they are bound to be diligent, and when called upon to litigate their claims they ought to present all they have to say, and that it is negligence to omit anything within their knowledge which might be available; and, if an omission is made, the consequences must fall upon the negligent party. Negligence of the party himself is the main element of the principle upon which the rule is founded. Says Mr. Justice Radcliffe, in the case cited: "It is evidently proper to prescribe some period to controversies of this sort, and what period can be more fit and proper than that which affords a full and fair opportunity to examine and decide all those claims. This extent of the rule can impose no hardship. It requires no more
254 than a reasonable degree of vigilance and attention." Again, (p. 495,) after stating that if the rule as stated is established, he says, "The only inquiry is, whether respondents, under the circumstances of the case, would have been permitted to make a defense on the trial at law, on the ground of the fraud which they now allege?" So, in the same case, Mr. Justice Kent says, "Every person is bound to take care of his own rights, and to vindicate them in due season and in proper order. This is a sound and salutary principle of law. Accordingly, if a defendant, having the means of defense in his power, neglects to use them, and suffers a recovery to be had against him in a competent tribunal, he is forever precluded." (Ib., 504.) * * * "All the testimony now produced was, for anything that appears to the contrary, equally within their power then, as now, and yet no effort was made to produce it. * * * They were guilty of gross and palpable neglect in thus slumbering upon this ground of defense, and must now be precluded from setting it up as a cause of equitable relief against the verdict. It is crassa negligentia if a party does not seek after a thing of which he is apprised, and, in law, amounts to notice. So whatever is sufficient to put a party on inquiry, is good notice in equity. If I am not mistaken in the principles which I have laid down, their application to the case before us is direct and pointed, and they operate with irresistible and conclusive efficacy to produce the result." (Ib., 504–'5.) Now, what is the great principle which the learned judge so earnestly insists upon as excluding the defense, but negligence of the par-
255 ties to avail themselves of the opportunity before afforded to bring forward their defense and have its merits determined? There had been a judgment for money recovered at law for proceeds of the sale of certain goods. Defendants then filed a bill in equity to restrain the collection of the judgment on the ground of fraud in representations as to the kind and quality of the goods, which fraud was available as a defense to the action at law, and was known to the defendants at the time, but which they did not attempt to set up, and this neglect is the principle upon which the former judgment is held to be conclusive. In the case now in hand this element of negligence is wholly wanting. The parties did set up this cause of action in connection with the one ultimately relied on, and sought to have it determined, but the court refused to permit them to be joined, and required the plaintiffs to elect

one and omit the other, and this ruling must be presumed to have been obtained at the instance of the defendant, Stark, as it was made against the protest and the exception of the plaintiffs, duly taken and noted in the order itself. Does it lie in Stark's mouth now, after procuring such a ruling, and forcing plaintiffs against their protest under the order of court, to omit one cause of action, to say that plaintiffs might have litigated the claim in that action, and, because they did not, must now be precluded? I think not. They sought to litigate it but were not permitted to do so. The opportunity was refused them. They were not in fault. Suppose Stark had been in possession and brought suit against the Starrs to quiet his title, and they had set up both
256 grounds of equitable relief in the answer, and evidence on both issues had been received, and a decree entered in favor of the Starrs upon the city title only, the court expressly declining to pass upon the other on the ground that it was unnecessary to consider it under the view taken, and this decree had become final by affirmance, neglect to prosecute any appeal, or otherwise, would it be pretended, in another litigation between the same parties, whose rights, under the claim of title not passed upon, are in question, that the former adjudication would be a bar because it was presented and evidence taken, and might have been determined if the judge had seen fit to consider and decide it? Such is, certainly, not the doctrine of the authorities, as will appear by a number of cases cited in Caperton v. Schmidt, 26 Cal., 479. If it were so, the conclusiveness of the judgment would rest upon the discretion, negligence, or something else, of the judge, over which the parties have no control, and not upon the diligence, good judgment, or other acts of the parties themselves.

But it is earnestly argued by defen'ant's counsel, that the ruling of the court that plaintiffs could only be heard upon one of their causes of action, and compelling them to elect upon which they would proceed, cannot affect the operation of the decree as a bar to this action; that they had a right to be heard upon every ground they had upon which to demand the relief prayed; that the refusal of the court to allow them to be heard was error, and should have been corrected in the same
258 case on appeal; and that it cannot be reached in a collateral proceeding in another suit to establish the same right or procure the same relief, and several authorities are cited as sustaining the proposition. There appears to me to be some confusion of ideas in this part of the argument, and a misapplication of the legal principles invoked.

The authorities cited, properly applied, seem to me to overthrow the main proposition sought to be established. The first authority cited is Cocke v. Halsey, 16 Pet., 71. In that case (page 87) the court say: "The correct legal principle applicable to such proceedings is this: That in every instance in which a tribunal has decided upon a matter within its regular jurisdiction, its decision must be presumed proper, and is binding until it shall be regularly reversed by a superior authority; and cannot be affected, nor the rights of persons dependent upon it be impaired, by any collateral proceeding. This principle has been too long settled to admit of doubt at this day, as in the cases of Thompson v. Tolmie and others, 2 Peters, 157; United States v. Arredondo, 6 Pet., 720; Voorhies v. The Bank of the United States, 10 Peters, 473; and the Philadelphia and Trenton Railroad Company v. Stimpson, 14 Pet., 458." Now, what was the adjudication in the case under consideration? Clearly, not that the cause of action omitted under order of the court was invalid, but that the plaintiffs could only be heard in that particular suit upon one of the causes of action alleged, and that they must elect upon

which they would proceed, and withdraw the other. This was, clearly, an adjudication, in the progress of the cause, which the court had
258 jurisdiction to make, and the determination is as conclusive as any other made in the progress of the cause. It was an adjudication between the parties, at the instance and in favor of one, against the other. An adjudication, not that plaintiffs could not be heard at all on that cause of action, but that both causes, on both grounds, for equitable relief, could not be heard in the same action, and that they must elect upon which they would proceed, and withdraw the other. Suppose, after making their election under the order, and proceeding upon their last amended complaint, as they did do, the decree of the court had been for the defendant instead of the plaintiffs, as it was, and the plaintiffs had appealed upon the sole ground that they had been compelled to elect and withdraw their other ground of relief, and the Supreme Court had affirmed the decree, holding that the two grounds of relief could not be heard in that action, that decision, whether right or wrong, would have settled the question by a direct adjudication, that the law of Oregon would not permit litigation of the two grounds of relief in one action. The decree, in that case, would clearly not have been res adjudicata as to the cause of action which plaintiffs were compelled to withdraw, for the very rule invoked is, that the judgment or decree is conclusive, not only upon all matters actually litigated and determined, but upon all that might be litigated in the action; and as, by the law thus settled, the omitted ground of relief could not be litigated in that action, the case would not be within the rule invoked at all. The adjudication by the circuit court is no less conclu-
259 sive. It stands unreversed on that point. Right or wrong, it is finally determined, and is res adjudicata between these parties, and, if erroneous, cannot be reviewed collaterally in this or any other action. The ruling has the same effect, and is as conclusive as if it had been rendered by the court of last resort. It settles the question between the parties and their privies; and so the authorities cited in principle hold. The adjudication is that the cause now relied on could not have been litigated in the former action with the ground of relief therein actually determined. It goes no further, and this is conclusive on that point. There has, then, been no negligence on the part of the plaintiffs —no laches—no opportunity presented of which they were bound to avail themselves, conceding the determination to be erroneous. So long as the ruling did not shut the plaintiffs off from any hearing whatever, but only adjudged that they must pursue their remedy on that ground of relief in another action, they were under no obligation to have the error corrected. It left the road to another action open. It did not purport to cut them off from a hearing, and did not determine that there was no cause of action. And, so long as it did not do this, it did not matter to them whether they presented that ground of relief in this or in another action. To the plaintiffs it was only a matter of convenience. It would doubtless be less trouble to pursue the remedy in another action than to attempt to correct the error in the one pending. Besides, the plaintiffs were not in a position in which they could appeal. That determination was not a final decree
260 from which an appeal could be prosecuted. It was an interloc*u*ry adjudication. The appealable decree was in their favor on the other ground of relief, and plaintiffs could not appeal from a decree in their favor, nor could they have errors committed against them in the progress of the cause occurring before the trial corrected on Stark's appeal. On such appeal the question would

not be presented. They, therefore, had no oppotunity to correct the error, had it devolved upon them to do so, in order to procure a hearing upon the cause of action which they were compelled to withdraw. It is urged by complainant's counsel, that the two grounds of relief sought by the Starrs in the former suit present causes of action so wholly distinct and independent that they were not bound to litigate them in one action, even if it was admissible to do so. One cause went upon the theory, that the legal title vested in the city of Portland, by virtue of its patent for the use and benefit of the actual occupants, who as to these lots were the Starrs, and that Stark had no title at all. The relief sought on this theory was in fact to remove a cloud upon a title already good. The other cause of action goes upon the theory that the legal title is in Stark by virtue of his patent, but that, by reason of equities arising between the parties themselves, the plaintiffs had the equitable right, and were entitled to a conveyance of the legal title. The case of Morris v. Stuart, 1 Iowa, 375, seems to be directly in point in favor of complainants on this question. But whether this case is correctly decided, I need not consider, for my conclusion is, that the former proceedings are not a bar to this action on the grounds already indicated.

261 As to the equities disclosed by the bill and the evidence, the first objection in logical order arises on the conveyance to Chapman. It is said, firstly, that the power of attorney to Chapman was insufficient; and, secondly, if sufficient, that it was incompetent for Chapman, as attorney for Lownsdale, to execute a deed for Lownsdale to himself. The power is, "to transact and superintend my business in said Territory during my absence; to do anything pertaining to my interests in Oregon, which he in his judgment may think advisable, particularly in signing deeds to Portland lots." The only business in Oregon which Lownsdale appears to have been engaged in at the time was selling town-lots in Portland. And this power seems broad enough to cover it. The language, it is true, is by no means technical, and is liable to criticism; but, considered in relation to the known situation of the parties, and the condition of things existing at the time, the intention of Lownsdale can hardly be doubtful. The act of the attorney in executing a conveyance for and in the name of the principal to himself may well be regarded as extraordinary. But whatever view might be taken upon these points, if there was nothing more, other facts must be considered. Chapman, himself, had already the title to one-third of all the interest ever claimed by Lowndale from Pettygrove, and Coffin owned another third, and it is not even suggested that Coffin's interest did not pass to Chapman by his conveyance. This vested in Chapman at least two undivided thirds of the lots conveyed in block 81, if

262 Lownsdale derived the title to the whole from Pettygrove, or two-thirds of one-half if Stark really owned one-half, as claimed by him. In fact the legal title to Lownsdale's entire interest purports to have been conveyed to Coffin by the deed under which Coffin became an owner. The deed is absolute on its face, and purports to convey the whole, and it is only by the accompanying agreement, executed between Coffin and Lownsdale at the same time, by which it appeared that it was to be held partly in trust for the benefit of Lownsdale, that the latter retained any interest at all. (See Lamb vs. Davenport, 1 Sawyer, 612, '13.) In this aspect, the legal title to the two-thirds of the possessory title passed to Chapman by Coffin's agreement, vesting in him the legal title to the whole, irrespective of Lownsdale's joining in the deed. But however this may be, Lownsdale was the only party entitled to complain,

and he does not appear to have ever made any objection. He acquiesced in the transaction, accepted the lot conveyed to him at the price fixed and charged in the accounts of the parties at the time of the conveyance, and these accounts on Lownsdale's return were settled between Lownsdale, Coffin, and Chapman on that basis. Chapman went into actual, several possession, and held till he conveyed to his vendees, who improved and have ever since occupied the lots without any claim on the part of Lownsdale. As between Lownsdale and Chapman, this certainly vested in Chapman all the right which could at that time be transmitted by Lownsdale, and Chapman acquired at least the equitable title to the whole. He already had the legal title to the possessory claim to the greater part.

263 The next question arises out of the deed of March 1, 1850, executed at San Francisco, by Lownsdale and Stark, by which they attempted to adjust and settle the conflicting claim of Stark to one-half interest in the Portland land-claim, and the subsequent modification and ratification as modified of this contract. It is claimed that there is no privity between complainant and defendant; that this deed is a contract between Lownsdale and Stark alone, and that in the subsequent modifications Lownsdale is no party, and that Coffin and Chapman assume to modify Lownsdale's contract without authority; and that the language of the modifying agreements is insufficient in various particulars to accomplish the object claimed. Like other contracts of that time relating to lands in Portland, the language of these various instruments is, doubtless, open to much criticism. But in construing such instruments, we must consider them in the light of the situation of the parties, and condition of things which gave them birth. We must place ourselves, so far as it is possible to do so by the use of extrinsic evidence now available, in the seats of the parties themselves at the time of the execution of the contracts, and examine them in view of the surrounding circumstances. (Kimball vs. Semple, 25 Cal., 449.) And we may, also, consider subsequent acts of recognition tending to show the construction put upon them by the parties themselves to the instruments. (Mulford vs. Le Franc, 26 Cal., 110, 112; Steinback vs. Stewart, 11 Wal., 576; Le Roy vs. Beard, 8 How., 468-9; French vs. Cathcart, 1

264 Com., 102; United States vs. Appleton, 1 Sum., 502.)

Examining the transaction and construing these instruments by the aid of these well-settled rules, I think there will be little difficulty in arriving at the true intent of the parties executing them. It is true that the ostensible parties to the instrument are Lownsdale and Stark, and for reasons sufficiently obvious, when the circumstances are considered. They were both in San Francisco, and Lownsdale, so far as anything to the contrary appears, without any power of attorney to act for his associates in the settlement of the controversy. He could not, therefore, make the compromise for them. It was manifestly contemplated that there were other parties whose assent it was necessary to obtain; and their assent was provided for in the only way practicable at the time, by a covenant on the part of Lownsdale inserted in the said indenture of March 1: "That in case any person or persons holding or claiming under him [Lownsdale] except the holders of those lots and under the conveyances especially hereinbefore confirmed by the said party of the first part [Stark] shall refuse to ratify and confirm this indenture, he, the said party of the second part, [Lownsdale,] will, at the option of the said party of the first part, [Stark,] at any time within six months from this date cancel this indenture and release all rights acquired under these presents by the parties hereto." There can be no

doubt to whom this covenant referred, because Stark knew before of at least Lownsdale's conveyance to Coffin. Coffin and Stark had before this time had a full discussion of their respective claims
265 to the Portland land-claim, as Coffin distinctly testifies, and there is nothing to the contrary, except the unsatisfactory general allegations of the answer, although Stark was himself a competent witness, and could have testified to the contrary had Coffin's testimony been incorrect. Besides, on September 26, 1849, at the same time when Stark executed the power of attorney to Couch, mentioned in the statement of facts, it was also accompanied by a letter of instructions to Couch, bearing the same date relating to the subject-matter of the power, in which he says: "With this you have from me a power of attorney of the fullest character, under which, during my absence from the Territory, you can look out for all my interests, particularly with reference to my interest in the Portland town-claim. As regards my claim, I wish you to notify Mr. Coffin, as soon as he returns, of the true position of things, and, if possible, have the difficulty concerning my undivided half settled." And again gave directions how to proceed if, "after the return of Mr. Coffin, the matter can be brought no nearer to a settlement upon just and equitable principles." In this letter of instructions he does not mention Lownsdale at all, but treats Coffin as the man with whom his controversy existed. Lownsdale's deed to Coffin had been made in March previous, and being a deed absolute on its face, he may have supposed at that time the whole title to be in Coffin. Indeed, prior to the conveyance to Chapman, Coffin and Lownsdale acted themselves as though the entire legal title was in Coffin, for Lownsdale when he sold a lot did it as attorney
266 for Coffin, as will be seen by reference to Lamb vs. Davenport, already cited. (1 Sawyer, 614.) But however that may be, it is clear that Stark knew of Coffin's interest. Although there is no direct evidence of the fact, it is altogether probable that he was also aware of Chapman's interest; for it is highly improbable that Lownsdale would have entered into the arrangement without disclosing it, and there is nothing in the testimony to justify the inference that the' did not know of it. There can be no doubt, I think, that Coffin and Chapman were the parties had especially in mind in making this covenant, although not mentioned by name. Perhaps these general terms were used in order to embrace any others who might have held such conveyances unknown to Stark. But whether Coffin and Chapman are, or are not, the parties specially referred to, they are clearly embraced in the terms of covenant. The assent of Coffin and Chapman to this settlement, and the ratification of the indenture by them, was regarded as essential, and provided for in this way. It was, therefore, contemplated that they were in fact, though not named as such, parties to said transaction and indenture, as well as Lownsdale and Stark.

Lownsdale returned to Portland on or about April 13, and brought to Coffin and Chapman the first information of the execution of the said indenture by Lownsdale and Stark. They promptly declined to ratify it. After some negotiation between Coffin and Chapman on one side, and Couch on the other, who acted for Stark, claiming to have
267 authority for that purpose, the two instruments, one dated April 13, 1850, signed by Coffin and Chapman, and the other April 15, 1850, signed "John H. Couch for Benj. Stark," set out in the statement of facts, were indorsed on the said indenture of March 1, and executed by the parties, and from that time forward the several parties and their grantees were in possession and exercising acts of ownership in accord-

ance with said agreements and modification without let, hindrance, objection, or adverse claim from the other till after the patent to Stark issued.

Some questions have been made upon the construction of these modifying and ratifying instruments. It is claimed that they are not ratifications, but modifications if anything; but are not the latter, because they are not the agreement of Lownsdale at all, who is claimed to be the only party, and that Chapman and Coffin had no authority to act for Lownsdale in modifying his agreement; that it only purported to ratify sales of lots made by Lownsdale either in person or by his lawful attorney, &c.

In view of the rules of construction cited, the relation of the parties to each other and to the lots, and of the condition of things already stated, the language, however inartificial, appears to me to be susceptible of but one reasonable construction. Chapman and Coffin were deemed to be the parties in interest, whose assent to the indenture of March 1 it was considered necessary to obtain, and which was sought to be secured by the covenant already considered. In the modifying instruments they were acting for themselves with respect to their
268 own interests and not for Lownsdale merely. They were unwilling to accept all the terms of the compromise made by Lownsdale and Stark; but were willing to accept them in part. They insisted that all the property disposed of since January first up to the time of receiving notice of the compromise should be placed on the same footing with the property sold prior to January first; and this being acceded to by Couch on behalf of Stark, they indorsed upon the indenture of March 1 a supplementary agreement, whereby they "ratify and confirm" that agreement between Lownsdale and Stark "respecting an adjustment of title, hereby placing the disposition of property up to notice of said adjustment upon the same footing with the disposition of property before the first day of January last." The plain meaning of which is that the contract made between Lownsdale and Stark shall be modified to this extent, and the contract as so modified ratified and confirmed. This modifying clause does not limit the enlargement to lots sold by Lownsdale individually since January 1. Its terms are general—"the disposition of property up to notice of said adjustment"—that is to say, all property sold or otherwise disposed of. It is perfectly obvious that the object was to take out of the conveyance to Stark all the property which Coffin and Chapman in prosecuting the business of what they call in their own agreements, the partnership in selling town property, all those lots disposed of during Lownsdale's absence from about the first of January till his return on or about April 13. Lownsdale having been absent during all that time had in person dis-
269 posed of none. But Coffin and Chapman had remained at home and continued to dispose of the common property, and these are clearly the dispositions intended by the modification insisted on. It is equally obvious that the instrument signed by Couch for Stark and appended to that executed by Coffin and Chapman, to wit, "I ratify the above agreement as far as my interest is concerned in said property," was intended to ratify the indenture between Lownsdale and Stark, as so modified and agreed to by that of Coffin and Chapman. If Couch had authority to sign the latter, or it having been signed by him for Stark, the latter, after being informed of the facts, acquiesced in and adopted it, then the contract so modified finally became the real and only contract between the parties, and all property disposed of subsequent to January 1st and before April 13th stood upon the same foot-

ing as that disposed of before January 1st. That is to say, Stark by the terms of the first covenant in the said indenture, thus extended in its scope by these modifications thus adopted, in the language of the covenant, "so far as his right, title, and interest are concerned ratifies and confirms all conveyances of" lots disposed of by Coffin, Chapman, and Lownsdale as owners of the Portland land-claim through Coffin and Chapman, from January 1 to April 13, as well as those to the lots sold before January 1, particularly enumerated in the covenant; and this embraces the lots in controversy.

It is next insisted that Couch had no authority to make this modification, and it is, therefore, not binding on Stark. We
270 have seen that a power of the most general character was given by Stark to Couch, his mercantile partner, September, 26, 1849, in which the authority to Couch is in these words, "To do any and all acts during my temporary absence which I might myself do were I personally present," without more particular specification or limitation. So, also, in an accompanying letter upon the subject-matter of the power, in which he directs Couch to notify Coffin, as soon as he should return, of the true position of things with reference to the interest claimed by Stark in the Portland land-claim, "and, if possible, have the difficulty, concerning my undivided half, settled." This letter shows that the power of attorney was intended to cover this very matter, and that he expected Couch to settle his controversy with Coffin in relation to this claim. It shows that Stark intended the power to be broad enough to settle this controversy. If it is not, the letter is, and it does not matter whether the authority is conferred by a formal power or by letter. (Lee vs. Rogers, 2 Sawyer.) It is sufficient that the authority is given, and directions to do a specific thing embraces power to act. Now this is precisely what Couch did with Coffin and Chapman, the latter having in the mean time, through conveyance from Coffin in part, at least, become interested with Coffin and Lownsdale.

It is claimed that this power, whatever it authorized, had been revoked; but there is no evidence, other than by implication, that it had been revoked at that time. Another full power of attoney, given
271 to George Sherman, dated January 17, 1850, was introduced, and claimed to be a revocation of Couch's power in the case of Failing vs. Stark; but I do not find it in evidence in this and the other cases. But suppose it to be in evidence, that power does not purport to revoke Couch's power, and if it does revoke it, it is by implication only, and that implication arises only from the fact that a second power has been given embracing the same subject-matter. It is by no means clear that it does embrace the entire subject-matter. While it is a very full power, authorizing Sherman to prosecute claims to land against individuals and the Government, and to lease and sell lands, it does not in express terms, or by reasonable construction, appear to me to authorize him to compromise or adjust this claim. It may well be that Stark would be willing to entrust his clerk, a young man, with power to prosecute or sell, while he would reserve to his more experienced partner's discretion and judgment the authority to settle or compromise by yielding a part to secure the remainder of his claim. But, if otherwise, I am not aware that giving a second power to another necessarily constitutes a revocation of the former power. I do not know any reason why two different persons may not be empowered to do the same thing. It has been held that they may. (Davol vs. Quimby, 11 Allen, 208.) Where not absolutely inconsistent the construction must

be determined by the circumstances, and from these I see no reason to suppose that Stark intended to revoke Couch's power in the particular under consideration. The circumstances indicate the contrary.
272 At the time of the execution by Couch of this instrument ratifying the modification made by Coffin and Chapman, Couch had in his possession the said indenture of March 1, between Lownsdale and Stark, to which these modifications were appended. It must have been sent to him by Stark to be used in connection with the agency claimed under the power before given. Stark must have sent it up to him at about the same time Lownsdale returned. The fact that it was sent to him by Stark would indicate that his agency was intended to be still continued with reference to a settlement of this controversy. It was contemplated that something further was to be done by way of procuring the assent of Coffin and Chapman to the settlement, and somebody must attend to it. Besides, Sherman was himself a clerk in the employ of Couch and Stark. And it is quite clear from the evidence that he, too, was consulted, took part in, and assented to the arrangement, although Couch actually executed for Stark the assent to the modification of the agreement. So, also, Sherman himself acting for Stark put the agreement with the modifications appended by Coffin and Chapman and by Couch on the records, and this, too, after Stark himself had been at Portland in June, and been informed of all these transactions, and it will be presumed under the circumstances by Stark's directions. This itself was an act of acceptance and adoption. In addition to this, Stark himself, while at Portland in June, called upon Coffin and Chapman for and was furnished by them with a list of all property
273 disposed of by them prior to the date of said modification. He stated to Coffin at that time, or on the steamer during his return voyage from San Francisco, that he would sanction the contract, or submit to it, and carry out its provisions; and his subsequent acts, and the acts of all parties interested down to the issue of the patent—a period of ten years—are consistent with that idea, and totally inconsistent with any other. Stark was in possession and exercised acts of ownership over the part conveyed to him by the modified contract from that time without setting up any claim to that released to Lownsdale, Coffin and Chapman, and the latter continued in possession and exercised acts of ownership over the part released to them without setting up any adverse claim to Stark's portion. Stark did not exercise his option to annul the contract within six months under the covenant in the indenture with Stark authorizing him so to do in case those having conveyances from Lownsdale should refuse to ratify the contract, and manifestly for the reason that he acquiesced in the contract as modified, and regarded that as a final settlement of the controversy. He availed himself of the right and undisputed possession thus acquired to procure his patent. Up to the date of his agreement with Lownsdale, Stark never claimed to have more than an undivided half of the Portland land-claim, and the title to two-thirds of the other undivided half of the entire tract north of the line agreed upon in the indenture of March 1, as well as to block 81, was in Coffin and Chapman at that date; and the only means by which Stark acquired his right to the possession of their share in any part of it or any several
274 possession by which he was enabled to obtain his patent at all to any part was through this modified contract. He could not adopt that part which was beneficial to himself and reject it so far as it was beneficial to Coffin and Chapman; and he manifestly did not attempt to do it until he had fortified his position ten years afterward by

a patent from the United States conveying to him the title to the land. I have only referred to the salient points of the evidence without any attempt at a discussion of the particulars, and I content myself with indicating the result forced upon my mind, and saying that, in my judgment, no unprejudiced mind can examine the evidence and fail to reach the conclusion that Stark fully acquiesced in, adopted, and acted upon the modifications of the contract made by Coffin and Chapman on the one part, and Couch for Stark on the other, in the sense adopted in this opinion; and that, as a result, he realized a fortune, or might have done so, if he did not, that might well have satisfied his ambition without any encroachment upon the rights that ought to have been secured without let or hindrance on his part ten years afterward to the other parties and their privies to those transactions. And more, it is equally manifest from the evidence that while there was no written covenant on the part of Stark to that effect, he held out by his acts and express declarations to the purchasers from Lownsdale, Coffin, and Chapman, and in particular to complainant and his brother, one of complainant's grantors,
and for a time a joint-owner, unmistakable assurances upon which
275 they were entitled to rely with confidence that if he obtained his
patent to his general claim he would convey to them the lots they had purchased. He expressly so told both the Starrs with reference to the lots held by them at the time, and to those other lots purchased by others from Chapman, and made similar declarations to some, if not all, of Starr's other grantors. The complainant himself purchased one-half of lot 2 from Chapman as early as October 3, 1850, and in December of that year he erected a tin-shop on it and occupied it. From that day till the filing of the bill in this case he has occupied it for mercantile purposes. In October and November, 1850, and January, 1851, Chapman sold the other lots in controversy, and the purchasers soon after entered, improved, and occupied in like manner, and their respective titles were acquired by Starr at various times before the issue of the patent to Stark—some before and some after Stark's said declaration to him—and the occupation continued, without adverse claim or hindrance on the part of Stark. A warehouse had been built upon one of the lots, even before Lownsdale acquired his interest from Pettygrove, and this Chapman occupied by himself, or tenants, while he claimed the lot under the conveyance before set out. The Starrs were joint owners and occupiers of parts of the lots during a portion of the time from 1850 to 1860, and while so occupying, Stark repeatedly told them that the title to their lots, and the others in the same situation, was good; and that when he got his patent he would convey the legal title to the owners of the possessory right. He stated
to complainant that if lot-owners would go in with him and
276 assist in getting title, he would make lot-holders good titles.
And Starr says that he and his brother "rendered assistance by not opposing him in getting his patent," and "by talking to others to get them to acquiesce in it, believing that he would make good their title, and in various other ways." One of these conversations was had at the very time when Stark was going to obtain his certificate of location, which was not obtained till the fall of 1853. Stark returned to Portland about October, 1850, and with brief temporary absences resided and did business in person within a short distance of this property, till he got his patent in 1860. During this time he had repeated conversations with the Starrs, and consultations and joint action in litigating other matters affecting the value of this property, and of other property which Stark himself owned; and during all this time no

claim was ever set up or intimated by Stark adverse to Starr or the other purchasers of the property from Chapman. Such is the result of the testimony of the Starrs, confirmed by other testimony, with none of any importance to oppose it. There is nothing to impeach its credibility beyond the coloring which the interest of the parties, however honest, may be supposed to give. But Stark is a competent witness, also, and it is but fair to presume that if he could have truthfully denied, or qualified in any material degree, the accuracy of the testimony given, he would have offered himself as an opposing witness upon these specific points and submitted himself to a cross-examination in the manner usual with other witnesses. He has not done so, other than by
277 the loose and general allegations in his answer to the bill; and I see no good ground for doubting the substantial correctness of the facts as stated. They harmonize with the acts and uniform conduct of Stark in relation to the matter. These further considerations not only go to establish beyond all doubt the conclusion that Stark fully acquiesced in and adopted the modification of the contract with Lownsdale assented to by Couch for him, but also show that the complainant and his grantors had every reason to believe, so far as acts and verbal promises can go, that Stark would obtain the title to the lots so embraced in the modified contract for the benefit of the purchasers from Chapman; and that the complainant and those under whom he claimed acted upon that idea, and permitted Stark to prove up his claim without any opposition from them. These are not mere loose general rumors, general expectations entertained by the public generally as to what the proprietors of this land-claim would do in the event of procuring title from the Government, but they are specific personal statements by Stark to Starr himself, and to those from whom he derives title, and in respect to these specific lots. And complainant derived title to some of them after these conversations, and to all of them after Stark by his acts had fully manifested his approval of the modifications of the contract in question. In these particulars the complainant appe'rs to me to stand in a much stronger position than Davenport in the case of Lamb vs. Davenport, and in an equally strong position in every other particular except one, which will be considered in its proper place.
278 It follows that whatever interest in the lots in controversy had been acquired by Pettygrove and Lovejoy, under whom Stark claimed, by virtue of a settlement, improvement, and occupation commenced in 1848 and continued in their grantees, as stated, including Stark, became fully vested in Chapman, and were by him either conveyed directly to complainant, Starr, or to others, who subsequently conveyed to Starr. As between complainant, Starr, and defendant, Stark, the complainant has all the right, title, and interest that it was possible for Stark to convey on March 15, 1850, the date of the modification of the indenture of March 1, 1850, by Couch for Stark, and subsequently acquiesced in by him in the manner indicated; and this included the initiation of the four years' possession dating from September previous, subsequently perfected into a full title by the patent issued in virtue of that possession. At that time the donation act had not been passed; consequently Starr acquired, through Chapman and the other parties before mentioned, all the title it was at that time possible to acquire—a title against all the world except the United States. The donation act having been passed in September, 1850, Stark afterwards filed his claim under that act, dating the possession upon which he relied, and which he afterwards proved up, and upon which the patent issued, from September 1, 1849, from which time his right subsequently perfected by his patent

dates—some seven months prior to the final compromise between Stark and Lownsdale, Coffin and Chapman. By that compromise the
279 right to the very possession of these particular lots upon which the patent issued passed, as the actual possession had before passed, to Chapman, and afterwards through him to Starr. Stark was not in fact in possession of these lots at the date from which he dates his settlement, nor at any time afterwards during the four years, while his possession was required to be continued to entitle him to a patent, as we have seen. During all that time it was in the occupation of Starr and his grantors. It follows that unless he obtained the title for the benefit of those who had purchased under the circumstances stated, he either committed a fraud upon them or else upon the United States and the law, for the law did not grant or intend to grant to one party land which he never possessed but which at all times was actually in the occupation of another.

The only particular in which Davenport occupied a better position in respect to the title to the lots claimed by him in Lamb vs. Davenport than Starr does in this, is the equity claimed by him under the fourth covenant in the instrument executed between Lownsdale, Coffin, and Chapman, commonly known as the escrow, which will be found set out in the report of that case. (1 Sawyer, 616–17.) That covenant does not apply to this case. In other respects, Starr's equity is equal to and in some particulars, as we have seen, stronger than Davenport's. The supreme court has recently decided that case on appeal, and the bearing of its decision upon this case will now be considered. The circuit court rested its decision upon the fourth covenant of the escrow, as expressly obligating Lownsdale to convey the legal
280 title, in case he should obtain it from the United States. While the supreme court affirmed that view, it is believed that an attentive consideration of the decision cannot fail to satisfy the inquirer that it is much broader in its scope. The supreme court says: "We are satisfied that by the true intent and meaning of these agreements the equitable right to all the lots in controversy had been transferred by Lownsdale to Coffin before the passage of the donation act, and that as between Lownsdale, Coffin, and Chapman the equitable interest, such as we have described it, of the lots in controversy, was in Coffin or his vendees. The record shows that this interest or claim, whatever it was at the commencement of this suit, was vested in Davenport, while the legal title was in the heirs of Lownsdale. According to well-settled principles of equity, often asserted by this court, Davenport is entitled to the conveyance of this title from those heirs, unless some exceptional reason is found to the contrary."

Now the agreements referred to by the supreme court by which "the equitable right to all the lots in controversy had been transferred by Lownsdale to Coffin before the passage of the donation act," and "was in Coffin or his vendees," were the agreements prior to the escrow, for that was not executed till long after the passage of the donation act, and it did not purport to transfer any interest in these lots at all. It was simply an arrangement for their own future action. After discussing the validity of the escrow, notwithstanding its execution after the passage of the donation act, the court proceeds: "And if this latter
281 agreement is rejected as altogether void, it is still apparent that by the contracts made prior to the donation act, the equitable right of Coffin to these lots is sufficiently established." Coffin's individual conveyances to Mills and Cheeny, under which Davenport claimed title, were not made till after the passage of the donation act,

and to sustain these conveyances under the act the court very properly distinguished Coffin's right as an individual lot-holder through mesne conveyances from the town proprietors and donee, from Coffin's right as general claimant and holder of the Portland land-claim and general town proprietor. The court say, in reply to the objection to the validity of the conveyances to Mills and Cheeny: "The answer is that Coffin is not the donee, who takes title under the act of Congress, but Lownsdale; and Lownsdale had made a valid agreement by which his interest in them was transferred to Coffin before that statute was passed." The conveyance by which the lots then in question passed from Lownsdale, donee, and Coffin, as general claimants and town proprietors, to Coffin as an individual lot-holder under the general claimant, is the conveyance made to Marshall, the substance of which is given in Lamb vs. Davenport, 1 Sawyer, 614. Marshall having resold the lots to Coffin as an individual, the latter subsequently conveyed them to Mills and Cheeny. This conveyance to Marshall is a simple quit-claim deed, without any covenant at all as to a future procurement of title, or for conveyance of title, should it be procured. Or, if we consider the conveyance from Lownsdale to Coffin, of March 30, 1850, Exhibit C of the evidence in the case now in hand, as the one
282 referred to by the supreme court under which the title of Lownsdale, donee, passed to Coffin, as purchaser, it is also but a quit-claim deed, equally barren of covenants. The equity of Davenport in that case, then, as against Lownsdale, the patentee and donee under the donation act, rested entirely on a quit-claim deed made under the circumstances detailed in that case. The court, then, distinctly hold in that case that a quit-claim deed, made in view of the condition of things existing at Portland at the time the various transactions considered occurred, gives an equity against the grantor, who subsequently obtains the legal title under the donation act, under the circumstances disclosed in that case. In fact, this ground of decision is, if possible, more distinctly brought out than the other, and is suggested as a ground free from doubt, even if the other were doubtful. Both points were fairly and directly presented by the record, and the decision might as well have been put upon one as the other, and both are distinctly determined. We can, therefore, no more say that one was not directly adjudicated than the other. But if we can, the court manifestly rest more directly and confidently on the equities derived from the quit-claim deeds prior to the escrow than upon the covenants in the escrow; for this is the point, particularly stated, and the only one mentioned in the close of the opinion, where the result is announced as follows: "But we hold that as to the portion of the land which was allotted to him by the surveyor-general, and the title of which vests in his heirs by the act of 1836, (5 U. S. Statutes, 31,) without which the patent would
283 be void, his contract of sale made before the donation act was passed, and while he was the owner of the possessory interest before described, was a valid contract intentionally protected by the donation act itself, and binding on the title which comes to his heirs by reason of his death."

Thus, ex industria, this point seems to be repeated as the one upon which the court designs principally to rest the decision. The conveyances referred to, as made before the passage of the donation act, do not embrace the escrow, for that was executed long after the passage of the act; and Davenport had no title whatever under any contract executed before the passage of the donation act, coming from Lownsdale, the donee, other than that by a quit-claim deed, without any fur-

ther covenants for title. The claimant in the case now under consideration substantially stands in the position, upon the facts stated, of having a conveyance of all of Stark's right, title, and interest on the 15th of March, 1850, which is after the initiation of the possession upon which his title to a patent as donee rested, which was commenced in September before, and was all the title he or any of the Portland land-claimants was capable of conveying at the time. It conveyed his right of possession and the rights incident to it. Complainant's title is, therefore, in every particular equal to that of Davenport derived from Lownsdale, under the conveyances made before the passage of the donation act. The complainant, therefore, is strictly within the decision of the supreme court in that case. It is impossible to take the present case out of the rule
284 there laid down. The decision is authoritative, and must control the decision of this case, and I am glad to be able to say that I am fully satisfied, as I think any reasonable mind must be, that the result in this case, and in the several others argued in conjunction with it upon the same, and substantially the same, testimony, is in strict accordance with the intrinsic justice of the case. In my apprehension, any other result in these cases would work great hardship and gross injustice. This class of cases is sui generis, and I do not now perceive why the rule established by the supreme court in Lamb vs. Davenport would not operate justly in all cases of the same class.

I have given these cases all that careful attention which ought to be bestowed when so large an amount of property, and principles so important, are involved, and have earnestly endeavored to reach a correct conclusion. If I have failed to correctly construe the decision of the supreme court, or have in any other particular misapprehended the law, I am glad to know that my error can and will be corrected by a higher tribunal, and justice ultimately done.

There must be a decree for the complainant in pursuance of the prayer of the bill with costs, and it is so ordered.

Deady, district judge, dissented upon the point as to the bar of the former proceedings; also, upon the point as to the effect of a conveyance of his interest without covenants, made by the donee under
285 the donation act, after the initiation of his possession upon which the patent issues, and prior to the passage of that act.

J. N. DOLPH, W. H. EFFINGER,
Attorneys for Complainants.
STRONG, BRONAUGH AND CATLIN,
Attorneys for Defendants.

286 United States circuit court, district of Oregon.

STARR *vs.* STARK. } No. 119.

Before Sawyer and Deady, J. J.

SAWYER, circuit judge:

This action embraces lot three, in book eighty-one, and is in all respects similar, and as to the litigated points, was submitted on the same evidence as the case of Starr vs. Stark, No. 62, just decided, except that the lot in this case was not embraced in the former action, the decree in which was claimed to be a bar in the other case. The proceedings in the former action, however, are set up and claimed to be a bar in this case, on the ground that the same questions might have been directly litigated in that action between the same parties; and that the decree

is as conclusive in this case as in the other. There can be no doubt, I think, that the decree upon the title actually litigated and de-
287 termined in that case—the title derived through the patent to the city—is conclusive in this action. But there can certainly be no ground for holding it conclusive upon those matters not in issue, and not litigated or determined, whatever may be the effect of that decree upon the title to the lots actually involved in the decision. The land in question here is a different subject-matter, and the parties are, certainly, not bound to litigate all their claims to this lot in an action about another lot, although the various chains of title to that other are the same. If the parties do, in fact, put the entire title in issue, and it is determined, the determination will be conclusive. But I know of no authority which goes so far as to sustain the position taken by defendant's counsel in this case.

The other questions are precisely the same as those discussed in Starr vs. Stark, No. 62, and upon the authority of that case there must be a decree for the complainant in pursuance of the prayer of the bill, with costs, and it is so ordered.

Deady, district judge, dissented, on the second point indicated in his dissent in Starr vs. Stark, No. 62.

J. N. DOLPH, WM. H. EFFINGER,
Attys. for Complainant.
STRONG, BRONAUGH AND CATLIN,
Attys. for Defendant.

288 United States circuit court, district of Oregon.

FAILING *vs.* STARK.

Before Sawyer and Deady, JJ.

SAWYER, circuit judge:

This is a bill in equity to restrain the defendant from prosecuting an action to recover the north half of lot three, in block twenty-seven, in the city of Portland, and to procure a conveyance of the legal title. The general facts are the same as those fully set out in Starr vs. Stark, No. 62, except that the first conveyance by which the possessory title passed out of the general claimants of the Portland land-claim was by Coffin, Lownsdale, Chapman, Hastings, and Baker, to J. T. Hobbs & Co., Hastings and Baker claiming some interest subordinate
289 to Chapman. This deed bears date March 14, 1850, and is, therefore, one of the lots sold in Lownsdale's absence, and is embraced in the modified contract considered in Starr vs. Stark. As to the question discussed in Starr vs. Stark, the equities in this case are in all particulars as strong as in that case, if not stronger. The testimony of Stark himself, given in another matter, was introduced in this case, and he nowhere in this testimony denies that he acquiesced in the modifications to the agreement of March 1, between himself and Lownsdale, ma e by Chapman and Coffin. He states that Coffin and Chapman ratified the agreement with the modifications, and that he went into the undisputed possession in accordance with that agreement. The plain inference from his own testimony is that he acquiesced in it. He nowhere in his deposition denies Couch's authority. It is perfectly clear from all the testimony that he did accept the modifications made by Coffin and Chapman, and acted upon them as valid. If he expected

any money consideration after this modification as to lots sold subsequent to January 1, 1850, he evidently looked to Lownsdale individually for it, and not to Coffin and Chapman. If he did not obtain it, it was a matter between him and Lownsdale personally. There is no defense of res adjudicata set up in this case.

The only other questions arise on defects in the mesne conveyances. Without discussing them in detail, suffice it to say that a valuable consideration was always paid, and the actual possession passed and continued in the several purchasers with the acquiescence and without any subsequent claim on the part of the vendors, and enough appears to show that the equitable title of the various intermediate holders from Lownsdale, Coffin, Chapman, &c., became fully vested in complainant.

290

Let a decree be entered in favor of the complainant in pursuance of the prayer of the bill, with costs.

Deady, district judge, dissented on the second point indicated in his dissent in the case of Starr vs. Stark, No. 62.

E. D. SHATTUCK,
Attorney for Complainant.
W. W. PAGE,
Attorney for Defendant.

291 United States circuit court, district of Oregon.

BACON
vs.
STARK.

Before Sawyer and Deady, JJ.

SAWYER, circuit judge:

This action embraces the south half of lot four, in block eighty-one, and is, in all essential respects, similar to the cases of Starr vs. Stark, just decided, and was submitted on the same testimony, so far as the litigated points are concerned, except that in this case it is not pretended that the former action is a bar to complainant Bacon's action. On the authority of Starr vs. Stark, a decree must be entered for complainant, with costs; and it is so ordered.

292 Deady, district judge, dissented on the second point indicated in his dissent in Starr vs. Stark, No. 62.

J. N. DOLPH,
WM. H. EFFINGER, *Attys. for Complainant.*
STRONG, BRONAUGH AND CATLIN,
Attys. for Defendant.

DISTRICT OF OREGON, *ss*;

I, Ralph Wilcox, clerk of the circuit court of the United States for the district of Oregon, do certify that the foregoing is a true and complete copy of the opinion delivered in the case of Lewis M. Starr against Benjamin Stark, as the same remains on file in said office.

In testimony whereof I have caused the seal of said court to be affixed this September 30th, A. D. 1874.

[SEAL.] RALPH WILCOX, *Clerk.*

(Indorsement on cover:) No. 225. Benjamin Stark, appellant, vs. Lewis M. Starr. Oregon C. C. U. S. Filed 4th November 1874.